

India

Hidden Apartheid

Caste Discrimination against India's "Untouchables"

Shadow Report to the UN Committee on the Elimination of Racial Discrimination

CHR&GJ
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Hidden Apartheid was produced as a "shadow report" to the UN Committee on the Elimination of Racial Discrimination (CERD), in advance of its February 2007 consideration of a report by the government of India.

CERD is a body of independent experts responsible for monitoring states' compliance with the International Convention on the Elimination of All Forms of Racial Discrimination. India ratified the Convention in 1968. The Convention guarantees rights of non-discrimination on the basis of "race, colour, descent, or national or ethnic origin." In 1996, CERD concluded that the plight of Dalits falls squarely under the prohibition of descent-based discrimination.

As a state party to the Convention, India is obliged to submit periodic reports detailing its implementation of rights guaranteed under the Convention. During the review session CERD examines these reports and engages in constructive dialogue with the state party, addressing its concerns and offering recommendations in the form of "Concluding Observations." As part of this process, CERD uses supplementary or alternative information contained in non-governmental organization "shadow reports" to effectively evaluate states' reports.

The India report being considered by CERD in February 2007 (the report was more than eight years overdue when it was submitted) covers more than a decade of India's compliance with the Convention (from 1996 to 2006) yet does not contain a single mention of abuses against Dalits—abuses that India's own governmental agencies have documented and verified. This report fills that gap and presents CERD members with information that we believe is essential to a fair assessment of India's record and, ultimately, to encouraging the government to live up to its treaty obligations.

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Hidden Apartheid

Caste Discrimination against India's "Untouchables"

Glossary

BJP: Bharatiya Janata Party

CEDAW Committee: Committee on the Elimination of Discrimination against Women

CERD: Committee on the Elimination of Racial Discrimination

CHR: Commission on Human Rights

CHRGJ: Center for Human Rights and Global Justice

FIR: First Information Report

ICERD: International Convention on the Elimination of All Forms of Racial Discrimination

NCDHR: National Campaign on Dalit Human Rights

NGO: Non-governmental organization

NHRC: National Human Rights Commission

POTA: Prevention of Terrorism Act 2002

UN: United Nations

VHP: Vishwa Hindu Prashad (World Hindu Council)

I. Summary List of the Critical Issues Pertaining to India's Periodic Report to the Committee on the Elimination of Racial Discrimination

Human Rights Watch and the Center for Human Rights and Global Justice (CHRGJ) at New York University School of Law submit the following information to the Committee on the Elimination of Racial Discrimination (Committee or CERD) for consideration in its review of India's fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (Convention or ICERD). This joint-submission is based on in-depth Human Rights Watch investigations on caste discrimination in India and the findings of Indian governmental and non-governmental organizations (NGOs) on caste-based abuses.

Discriminatory and cruel, inhuman, and degrading treatment of over 165 million people in India has been justified on the basis of caste. Caste is descent-based and hereditary in nature. It is a characteristic determined by one's birth into a particular caste, irrespective of the faith practiced by the individual. Caste denotes a traditional system of rigid social stratification into ranked groups defined by descent and occupation. Caste divisions in India dominate in housing, marriage, employment, and general social interaction—divisions that are reinforced through the practice and threat of social ostracism, economic boycotts, and physical violence. This report focuses on the practice of "untouchability"—the imposition of social disabilities on persons by reason of their birth in certain castes. This practice relegates Dalits, or so-called untouchables (known in Indian legal parlance as scheduled castes), to a lifetime of discrimination, exploitation and violence, including severe forms of torture perpetrated by state and private actors in violation of the rights guaranteed by the Convention. Although the practice has been condemned by many Indian leaders, including most recently by Prime Minister Manmohan Singh, unless the government accepts responsibility to end the widespread prejudice, crimes against Dalits will continue. India has consistently cited its numerous legislations and government policies as a measure of compliance with its obligations to end caste-based discrimination, choosing to ignore its failure to implement these measures which has resulted in continued, and sometimes enhanced, brutalities against Dalits.

Human Rights Watch and the CHRGJ respectfully request that the following issues be raised in the List of Issues addressed to the State Party and in the State Party examination.

Article 1

In response to the Committee's request that the Government of India submit information on issues pertaining to Scheduled Castes and Scheduled Tribes, India's periodic report states that "'caste' cannot be equated with 'race' or covered under 'descent' under Article 1 of the Convention." India's position directly contradicts the Committee's interpretation of Article 1 in General Recommendation XXIX that "discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status." However, we welcome Prime Minister Singh's comment on December 27, 2006 that:

> *Dalits* have faced a unique discrimination in our society that is fundamentally different from the problems of minority groups in general. The only parallel to the practice of 'untouchability' was Apartheid in South Africa. Untouchability is not just social discrimination. It is a blot on humanity.

We hope that this statement will prompt appropriate reforms in government policies.

On the basis of this information, we respectfully request that the following issues be raised with the State Party:

- Elaborate upon the basis for India's position that descent-based discrimination does not encompass caste discrimination, including why India has not brought its definition of descent-based discrimination in line with the Committee's General Recommendation XXIX.
- Elaborate on measures taken pursuant to General Recommendation XXIX, and monitor and report on such measures.
- Provide data, disaggregated *inter alia*, by caste and gender on the enjoyment of Convention rights.

Article 2

India's failure to ensure that all public authorities and public institutions do not engage in caste-based discrimination is widespread. Two examples exemplify this failure: treatment of Dalits by the police and discrimination in the provision of disaster relief. India's National Human Rights Commission (NHRC)—a statutory government body that the Indian government describes as the apex national institution to protect human rights and redress grievances—has commented that the law enforcement machinery is the greatest violator of Dalits' human rights. According to the NHRC, widespread custodial torture and killing of Dalits, rape and sexual assault of Dalit women, and looting of Dalit property by the police "are condoned, or at best ignored." This problem is not a recent one. In 1979 India constituted the National Police Commission to analyze problems in police performance. However, the Commission's recommendations, which include recommendations specific to police abuse of Dalits, have still not been adopted. While the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989 (hereinafter Prevention of Atrocities Act, 1989) and the Supreme Court guidelines set out in the *D.K. Basu* case are available legal tools to prevent torture, illegal detention, or improper interrogation of Dalits, jurists, human rights activists and civil rights groups claim that a lack of political will and immunity laws that shield those responsible for human rights abuses from prosecution, allow the problem of torture and other forms of custodial abuse to continue unchecked.

Dalits are particularly vulnerable to arrest under draconian security laws. Additionally, under a theory of collective punishment, the police often target entire Dalit communities in search of one individual and subject the community to violent search and seizure operations. Dalit women are particularly vulnerable to sexual violence by the police, which is used as a tool to punish Dalit communities. Police also actively allow private actors to commit violence against Dalits with impunity, and at times, collude with private actors in committing such atrocities. Police systematically fail to properly register these crimes under the Prevention of Atrocities Act, 1989 and the Protection of Civil Rights Act, 1995.

According to separate investigations by the National Campaign on Dalit Human Rights (NCDHR) and Human Rights Watch, India failed to protect Dalits from discrimination in the distribution of aid in the wake of two of India's largest natural disasters in recent years: the Gujarat earthquake in January 2001 and the Indian Ocean tsunami in December 2004. India

has also failed to encourage integrationist movements or eliminate barriers between castes. It has allowed segregation in schools and housing, and has failed to faithfully implement constitutional and legislative abolitions of "untouchability" practices. Additionally, as Dalits increasingly organize to protest their discriminatory treatment and claim their rights, the government has consistently failed to protect Dalits against retaliatory attacks by upper-caste groups, including the rape of Dalit women, and has failed to address social and economic boycotts against Dalits, thereby further discouraging integrationist movements.

On the basis of this information, we respectfully request that the following issues be raised with the State Party:

- Identify measures the government is implementing to ensure appropriate police reforms to eliminate police abuses against Dalits.
- Indicate whether a timetable exists for India's ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Outline measures undertaken to implement the recommendations of the National Police Commission and the Supreme Court's *D.K. Basu* guidelines with particular attention to protection of Dalits from torture.
- Explain factors that account for the low rate of convictions in cases brought by Dalits and measures taken to address these factors.

The extreme marginalization and persecution endured by Dalits necessitate efforts by the government to ensure their development and protection. Accordingly, under constitutional provisions and various laws, India grants Dalits a certain number of privileges, including "reservations" (quotas) in education, government jobs, and government bodies. Like many of the protective measures adopted, the reservation policy has not been successfully implemented for Dalits. Caste-based occupational distribution is reinforced in reserved government employment, with Dalits assigned primarily to the posts of sweepers. Reservations in higher education continue to be met with a great deal of resistance leading to under-enforcement. Additionally, there has been widespread public opposition to reservations for Dalits in local government bodies, often leading to acts of violence, including the rape and murder of Dalit candidates.

The NHRC has recommended that the government identify institutions that had not accepted reservations—including judiciary and defense forces—and develop measures to ensure that Dalit candidates have the opportunity to compete for these positions. The National Commission for Scheduled Castes and Scheduled Tribes—a constitutional body with jurisdiction to promote respect for the human rights of Dalits and tribal groups, monitor and investigate the observance of these rights, and secure appropriate redress when these rights have been violated—has stated that the private sector, which continues to enjoy government patronage, should also be brought under the purview of the reservation policy. According to government estimates in 2000, the unemployment rate for Dalits and tribal groups was double that of non-Dalits/tribals. Additionally, public sector divestment to private owners is estimated to have left 200,000 Dalit employees jobless. Dalits continue to be significantly underrepresented in most professional strata. Dalit representation in India's high industries, exports, imports, and electronic industries sectors is dismal.

The Government of India has also established several programs for the development of Dalits. According to the NHRC, however, the beneficial impact of these programs has been hindered by inadequate investment of public resources; non-utilization or diversion of funds earmarked for Dalit development; lack of programs specifically targeted to Dalit development; poor preparation of such projects; and a lack of monitoring of development programs, leading to the failure of many such programs to reach their target groups.

Additionally, India has failed to address the multiple axes of discrimination faced by Dalit women— including their unequal access to services, employment opportunities, and justice mechanisms as compared to Dalit men—and threats to their personal security, including through brutal acts of sexual violence and through the system of *devadasi*, in which a girl, usually before reaching the age of puberty, is ceremoniously dedicated or married to a deity or to a temple.

On the basis of this information, we respectfully request that the following issues be raised with the State Party:

- Identify strategies for overcoming obstacles in the implementation of the reservations policy, including how the Government intends to ensure protection from retaliation for Dalit candidates in all local elections where seats are reserved for

Dalits, including village council elections, and provide an update on the status of proposals to extend equal opportunity measures including reservations to other public spheres and the private sector.
- Elaborate on plans to implement laws and government policies to secure the protection and development of Dalits, and of Dalit women in particular.

Article 3

Residential segregation of Dalits is prevalent across the country, and is the rule rather than the exception. Segregation is also evident in schools, in access to public services, and in access to services operated by the private sector (as described under Article 5). In his 1999 Annual Report, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance found "untouchability" to be "very much alive" in rural areas, as reflected in caste-based segregation in housing, schools, public services, public places, and in the prohibition against Dalits' use of shared water sources. A recently published survey investigating the extent of "untouchability" practices in 565 villages in 11 Indian states found that the constitutionally abolished crime of "untouchability" continues to profoundly affect the lives and psyches of millions of Dalits. "Untouchability" practices were documented in almost 80 percent of the villages surveyed.

On the basis of this information, we respectfully request that the following issue be raised with the State Party:

- In light of General Recommendation XIX on Article 3 of the Convention, indicate specific measures that India has implemented to eradicate *de facto* segregation and the practice of "untouchability," and provide information on the impact of these measures.

Article 4

In its periodic report, India indicates that "[n]o cases have arisen under the… legislations for inciting racial disharmony or disseminating ideas of racial superiority." The absence of such cases must be questioned in light of the casteist and anti-Christian and anti-Muslim

propaganda of the *Sangh Parivar*, which serves as the umbrella organization for Hindu nationalist organizations in India, including the Rashtriya Swayamsevak Sangh (National Volunteer Corps, RSS), the Vishwa Hindu Parishad (World Hindu Council, VHP), and the VHP's militant youth wing, the Bajrang Dal. These organizations bear collective responsibility for widespread violence against Muslims and Christians in India, and have disseminated propaganda targeting both Dalits and religious minorities. The political wing of the *Sangh Parivar*, the Bharatiya Janata Party (BJP), led the Government of India in alliance with other parties between 1998 and 2004, and continues to head several state governments.

On the basis of this information, we respectfully request that the following issues be raised with the State Party:

- Indicate measures undertaken by India to combat hate speech and other forms of propaganda inciting caste discrimination and violence, and discrimination and violence against religious minorities.
- Indicate measures undertaken by India to prosecute and punish members of *Sangh Parivar*-affiliated groups responsible for atrocities against Dalits and religious minorities, including violent attacks, massacres, and forced "reconversions" to Hinduism.

Article 5

Dalits' fundamental civil, political, economic, social, and cultural rights are routinely violated by state actors and private individuals.

The right to equal treatment before the tribunals and all other organs administering justice

In the administration of justice, police, prosecutors, and judges fail to properly pursue cases brought by Dalits concerning discriminatory acts. This is evidenced by the high rate of acquittals and the large number of cases involving offenses and atrocities against Dalits still pending before the courts. Dalit women in particular lack sufficient redress for the

crimes committed against them due to the caste and gender biases of India's law enforcement machinery.

The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution

The police have systematically failed to protect Dalit homes and Dalit individuals from acts of looting, arson, sexual assault, torture, and other inhumane acts such as the tonsuring, stripping and parading of Dalit women, and forcing Dalits to drink urine and eat feces. Much like cases of police abuse against Dalits, attacks by private actors often take the form of collective punishment, whereby entire communities or villages are punished for the perceived transgressions of individuals who seek to alter village customs or demand their rights.

On the basis of this information, we respectfully request that the following issues be raised with the State Party:

- Provide detailed information on any specific training for members of the judiciary, law enforcement officials and other public officials on the provisions of the Convention, as well as applicable domestic legislation, and their application to Dalits in particular.
- Provide data on the number of cases of caste discrimination considered by courts since the State Party's last periodic report, case outcomes, and remedies (including civil remedies) available and granted to victims of caste discrimination.

Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service

Dalits' political rights, especially the right to vote freely and the right to stand for election, have repeatedly been denied by upper-caste community members by booth-rigging and booth capturing, denial of access to polls, intimidation, and violence.

The right to freedom of opinion and expression and freedom of peaceful assembly and association

Dalits' right to freedom of opinion and expression, and rights to freedom of peaceful assembly and association are compromised by police abuse of Dalit activists, retaliatory attacks by private actors that are carried out with impunity, and social and economic boycotts against Dalits.

The right to form and join trade unions

Dalits' right to form and join trade unions is undermined by an unwillingness to register unions where workers are illiterate.

On the basis of this information, we respectfully request that the following issue be raised with the State Party:

- Provide information (including statistical data, disaggregated by caste and gender) on the actual participation of Dalits in State institutions, including national and local government, the police, the judiciary, and in institutes of higher education.

The right to freedom of movement and residence within the border of the State and the right to leave any country, including one's own, and to return to one's country

Dalits' right to freedom of residence is severely curtailed by the practice of "untouchability" which often dictates where Dalits must live. Dalits' right to freedom of movement within India is curtailed by conditions that make Dalits vulnerable to migratory labor and by the forced displacement of Dalits in the aftermath of episodes of caste violence. Moreover, Dalits' right to leave India, while formally granted, is not substantively guaranteed due to Dalits' disproportionately low economic status and their inability to acquire relevant documents and the proof necessary, for instance, to make a passport.

The right to marriage and choice of spouse

Strict prohibitions on marriage and other social interaction between Dalits and the upper-caste routinely violate the rights of Dalits to marry and choose their spouse. These prohibitions on inter-marriage are a hallmark feature of the caste system and are designed to ensure rigid social norms of purity and pollution. Inter-marriages are frequently the

flashpoint for conflicts and can be extra-judicially punished by upper-caste dominated *panchayats* (village councils) through public lynching of couples or their relatives, murder (of the bride, the groom, or their relatives), rape, public beatings, and other sanctions.

The right to own property alone as well as in association with others and the right to housing

The right to own property is systematically denied to Dalits. Landlessness—encompassing a lack of access to land, inability to own land, and forced evictions—constitutes a crucial element in the subordination of Dalits. When Dalits do acquire land, elements of the right to own property—including the right to access and enjoy it—are routinely infringed. Land reform legislation is neither implemented nor properly enforced. Dalits' efforts to secure land have been met with State violence or retaliation by private actors in the form of violence or economic sanctions. Dalits' right to housing is further undermined by residential segregation, discrimination in housing in urban environments, and the aforementioned violations of their right to own property.

On the basis of this information, we respectfully request that the following issues be raised with the State Party:

- Provide information on measures that are being taken to protect Dalits against displacement from their homes, to compensate Dalit victims of displacement, and to prosecute those responsible for committing atrocities to deter or punish inter-caste marriages.
- Provide information on the successes and failures of land reform legislation and on efforts to ensure Dalits' right to own property, including on the nature of strategies that may be needed to maximize the effectiveness of land reform for Dalits.

The right to freedom of thought, conscience, and religion

Dalits in India face a number of restrictions on their right to freedom of thought, conscience, and religion. Dalits are, for instance, routinely denied entry into Hindu temples. Even when such entry is sanctioned by the courts, priests and upper-castes resist such moves, often leading to violence. Dalits have responded to ill-treatment by upper-caste Hindus by converting en masse to Buddhism, Christianity, and historically, to Islam. However, the loss of constitutional privileges upon conversion (to Christianity and Islam) is a serious

impediment to Dalits' freedom to choose their religion. In addition, the introduction of anti-conversion legislation in several states has made religious conversion extremely difficult if not impossible. Tragically, even conversion does not guarantee escape from their treatment as "untouchables" since "untouchability" is practiced across all faiths in India.

On the basis of this information, we respectfully request that the following issue be raised with the State Party:

- Provide information on whether the State is reviewing and addressing the potential negative effects of anti-conversion legislation on the right to freedom of thought, conscience, and religion, and on whether the State is considering extending scheduled caste benefits to all Dalits, regardless of the faith they practice.

Rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration

The denial of the right to work and free choice of employment lies at the very heart of the caste system. Dalits are forced to work in "polluting" and degrading occupations such as manual scavenging and are subject to exploitative labor arrangements such as bonded labor, migratory labor, and forced prostitution. Dalit children are vulnerable to trafficking and the worst forms of child labor in these and other areas. Dalits are also discriminated against in hiring and in the payment of wages by private employers. Dalits' attempts to enforce their rights are met with retaliatory violence and social and economic boycotts. Laws designed to eradicate exploitative labor arrangements—such as the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, the Bonded Labour System (Abolition) Act, 1976, the Inter State Migrant Workmen (Regulation of Employment and Service Conditions) Act, 1979, the Child Labour (Prohibition and Regulation) Act, 1986, the Minimum Wages Act, 1948, the Equal Remuneration Act, 1976, and the Karnataka Devadasi (Prohibition of Dedication) Act, 1992—and where relevant, their accompanying rehabilitation programs, are largely ineffective.

On the basis of this information, we respectfully request that the following issue be raised with the State Party:

- Outline how India plans to ensure effective eradication of exploitative labor arrangements and the effective implementation of rehabilitation schemes for Dalit bonded and child laborers, manual scavengers, and *devadasis*.

The right to public health, medical care, social security, and social services

Dalits are often refused admission to hospitals, or access to health care and treatment in violation of their rights to the highest attainable standard of health and social services. In a number of cases those who are admitted receive discriminatory treatment. In addition, caste-based occupations that Dalits are made to perform, such as manual scavenging and forced prostitution, frequently expose Dalits to serious and sometimes fatal health hazards. Manual scavengers are routinely exposed to both human and animal waste without the protection of masks, uniforms, gloves, shoes, appropriate buckets, and mops. This has severe repercussions for their health; the majority of scavengers suffer from anemia, diarrhea and vomiting, with 62 percent suffering respiratory diseases, 32 percent suffering skin diseases, 42 percent suffering jaundice, and 23 percent suffering trachoma, leading to blindness. Many scavengers have also died of carbon monoxide poisoning while cleaning septic tanks. In Mumbai, for instance, Dalits are lowered into manholes to clear sewage blockages—often without any protection. More than 100 workers die every year due to inhalation of toxic gases or drowning in excrement. Dalit women and girls who are forced to become *devadasis*, and ultimately auctioned to urban brothels, are at particular risk of contracting HIV/AIDS.

The right to education and training

The right to education free from discrimination is not secured for Dalit children. 99 percent of Dalit students are enrolled in government schools that lack basic infrastructure, classrooms, teachers, and teaching aids. Dalit children face continued hurdles and abuse from teachers and fellow non-Dalit students, including through segregation both in classrooms and in the provision of mid-day meals. Dalit schoolchildren also face discrimination and discouragement from higher-caste community members who perceive education for Dalits as both a waste and a threat. Their hostility toward Dalits' education—which includes discrimination against Dalit teachers—is linked to the perception that Dalits are not meant to be educated, are incapable of being educated, or if educated, would pose a threat to village hierarchies and power relations. Additionally, Dalit children are often subjected to corporal punishment by their teachers. As the Special Rapporteur on the right

to education noted in his report before the 67th session of the then-Commission on Human Rights (CHR), "teachers have been known to declare that Dalit pupils 'cannot learn unless they are beaten.'" Dalits' labor patterns (migratory and child labor) also adversely affect access to education. A combination of these factors results in low enrollment, high drop-out rates, and low literacy rates of Dalit students.

The right to equal participation in cultural activities

Dalits are prohibited from taking part in religious and cultural rituals and festivals, including through a ban on marriage processions on roads. Where Dalits are included in village ceremonies and festivals, their participation is limited to the performing of degrading tasks. Additionally, they are expected to provide services during rituals and festivals without remuneration.

The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres, and parks

Dalits are denied equal access to a spectrum of places and services intended for use by the general public, such as police stations, government ration shops, post offices, schools, water facilities, and village council offices. As a result of segregation in water facilities, more than 20 percent of Dalits do not have access to safe drinking water, only 10 percent of Dalit households have access to sanitation (as compared to 27 percent for non-Dalit households), and the vast majority of Dalits depend on the "goodwill" of upper-caste community members for access to water from community wells. Dalits are also excluded from, or receive discriminatory treatment in, private businesses, including tea shops, food stalls, barber shops, and cinemas. Because of strictly enforced prohibitions on inter-dining, Dalits are made to use separate crockery and cutlery, and drink from separate tea glasses which they are then required to wash.

On the basis of this information, we respectfully request that the following issues be raised with the State Party:

- Identify measures to protect Dalits' right to health, including through ensuring greater access to health care services, and through eradicating the inhuman practice of septic tank cleaning, and other hazardous tasks performed by manual scavengers.

- Identify steps taken to eradicate segregation, particularly in access to public services, and to address the violations of Convention rights occasioned by segregation, such as the right to water and the right to education free from discrimination.

Article 6

In its periodic report, India cites to its constitutional provisions and legislative measures (which constitutionally must apply to all people irrespective of caste) that open its courts to victims of discrimination. In 2004 the NHRC released the findings of an in-depth examination of the implementation of protective legislation for scheduled castes. The report is a strong indictment of the government's failure to carry out its promises to protect Dalits from atrocities and violations of their fundamental rights and to grant remedies for rights' violations. On the question of remedies, the NHRC found that even where cases are properly registered, several states are not providing economic relief or compensation to victims of atrocities as is required.

On the basis of this information, we respectfully request that the following issues be raised with the State Party:

- Provide further information on the current situation regarding access to justice and right to remedies for Dalit communities, including the effectiveness of existing access to justice mechanisms and how the government intends to enforce the requirement of economic relief and compensation for victims.
- Provide information on the composition, status, resources, and activities of the National Commission on Scheduled Castes and Schedules Tribes, including the number of complaints received (if any) and their nature, investigations by the Commission, and forms of redress provided.
- Identify obstacles in the implementation of legislation designed to protect Dalits and strategies to overcome these obstacles, including the extent to which the State Party intends to incorporate the recommendations of the 2004 report of the NHRC on atrocities against scheduled castes.

Article 7

There is a severe lack of public education and awareness of caste discrimination in India. Treatment of caste discrimination in textbooks and curricula may strengthen caste division and prejudice, as does the pervasive practice of segregation in government schools. Even progressive curricula either exclude any mention of caste discrimination or discuss the caste system in a way that suggests that caste inequities and discrimination no longer exist. School textbooks may similarly fail to mention caste discrimination, may attempt to justify the origins of caste discrimination, or may attribute the unequal situation of Dalits to the Dalit community. The problem is compounded by inadequate media representation of Dalit issues and the lack of Dalit journalists generally. Since caste-based discrimination is not as highly visible in urban settings, opinion makers, particularly the media, do not pay sufficient attention to the rampant and continuing practice in rural areas. The NHRC has found that the media "provides negligible space to …plight/problems" of Dalits. Instead, these communities mostly receive media attention only when the discussion is focused on violent protests, backwardness, population growth, and lack of entrepreneurship and productivity, thereby perpetuating caste-based stereotypes.

On the basis of this information, we respectfully request that the following issues be raised with the State Party:

- How the government intends to ensure that all textbooks, curricular, and media representation of Dalits do not strengthen caste division and prejudice.
- Indicate whether measures have been taken to disseminate the Convention and General Recommendation XXIX and to promote educational measures that combat caste discrimination.

Human Rights Watch and CHRGJ thank the Committee for its consideration of this information.

II. Authors of the Report

Human Rights Watch and the Center for Human Rights and Global Justice (CHRGJ) at New York University School of Law submit the following report to the Committee on the Elimination of Racial Discrimination (Committee or CERD) for consideration in its review of India's fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination (Convention or ICERD).

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CHRGJ is directed by Professors Philip Alston, Smita Narula, and Margaret Satterthwaite. Jayne Huckerby is research director. CHRGJ aims to generate substantive, cutting-edge, and sophisticated contributions to human rights research and legal scholarship, and to actively engage in public affairs by making original and constructive contributions to ongoing policy debates relating to human rights. It achieves these aims by undertaking rigorous legal analysis and disseminating studies in five key research and project areas: Detainees and the "War on Terror," Discrimination and National Security, Economic, Social, and Cultural Rights, Extrajudicial Executions, and Transitional Justice. In its work on Discrimination, the Center and the International Human Rights Clinic (a program of the Center) have focused on caste discrimination in South Asia, collaborating extensively with the International Dalit Solidarity Network, of which Professor Narula is a co-founder. Professor Narula is also former researcher for South Asia at Human Rights Watch where she investigated and authored a number of Human Rights Watch's reports on caste discrimination and discrimination against religious minorities in India. Most recently, in August 2005, during the meeting of the United Nations (UN) Sub-Commission on the Promotion and Protection of Human Rights, the Center released a 65-page report entitled *The Missing Piece of the Puzzle: Caste Discrimination and the Conflict in Nepal*, and in November 2005, provided an oral statement to the UN Committee Against Torture urging the Committee to investigate torture against Dalits in its State Party examination of Nepal. All publications and statements of the Center can be found at its website: www.chrgj.org.

Human Rights Watch

An independent, New York-based nongovernmental organization, Human Rights Watch conducts regular, systematic fact-finding investigations into human rights abuses in all regions of the world. Human Rights Watch examines human rights practices of state and non-state actors irrespective of their political affiliation, geopolitical alignments, ethnic or religious persuasions. It defends freedom of thought and expression, due process and equal protection of the law, and a vigorous civil society. Founded in 1978, Human Rights Watch today includes divisions that cover Africa, Asia, the Americas, Europe and Central Asia, and the Middle East in addition to its thematic divisions. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director and Brad Adams heads the Asia Division. Human Rights Watch has worked on caste-based discrimination in South Asia for almost a decade, but particularly since the 1999 publication of its report *Broken People: Caste Violence Against India's "Untouchables."* Human Rights Watch is a founding member of the International Dalit Solidarity Network and collaborates extensively with a number of Dalit rights groups in South Asia. It has recently been advocating for the protection of Dalits who are particularly vulnerable in situations of internal conflict. An armed conflict involving Maoists in Nepal, and a similar uprising in several Indian states in India by Maoist groups known as Naxalites, has placed Dalits at high risk of abuse from security forces, vigilante groups often acting with the support of the government, and militants. It has also documented the particular vulnerability of Dalits among children employed in the worst forms of child labor and among those living with HIV/AIDS. Human Rights Watch investigated the failure of the state to protect Dalits from discrimination in receiving relief and rehabilitation after the 2006 tsunami; its recommendations were submitted to the Indian government as it prepared its disaster management policy. All reports, editorials, and statements of Human Rights Watch are available on www.hrw.org.

III. Scope of the Report

This report focuses solely on the issue of caste discrimination in India in response to its conspicuous absence in the Government of India's combined report to CERD. The practice of "untouchability"—the imposition of social disabilities on persons by reason of their birth in certain castes—discriminates against more than one-sixth of India's population.[1] Dalits, or so-called untouchables (known in Indian legal parlance as scheduled castes), are denied access to land, forced to work in degrading conditions, and routinely abused at the hands of the police and of higher-caste groups that often enjoy the state's protection.[2] In what has been called India's "hidden apartheid," entire villages in many Indian states remain completely segregated by caste. In focusing on caste discrimination in India, this report acknowledges, but does not explore, the other pervasive practices of discrimination in India, including those that target religious minorities. In particular, Human Rights Watch has extensively documented human rights violations against India's Christian[3] and Muslim community, including the state-sponsored massacre of over 2,000 Muslims in the state of Gujarat in 2002.[4]

While the Government of India's periodic report cites specifically to Constitutional provisions prohibiting discrimination by the State—including on grounds of a person's caste—and generally to the existence of legislation enacting these provisions,[5] this elaboration of its *de jure* prohibition on caste discrimination does not reflect the daily reality of the continued practice of "untouchability" and persecution of Dalits in India. Dalits are systematically discriminated against and abused by public authorities and private actors, who act without any fear of punishment as they rarely face sanctions for their violations of Dalits' fundamental rights.

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[1] Human Rights Watch, *Broken People: Caste Violence Against India's "Untouchables"* (New York: Human Rights Watch, 1999), pp. 1-2. [hereinafter *Broken People*]. According to the 2001 census, the scheduled caste population comprises 16.2 percent of the India's total population. India's Combined second and third periodic reports to CEDAW, October 19, 2005, CEDAW/C/IND/2-3, para. 92.

[2] Human Rights Watch, *Broken People*, p. 2.

[3] Human Rights Watch, *Politics by Other Means: Attacks Against Christians in India*, Vol. 11, No. 6, September 1999.

[4] Human Rights Watch, *We Have No Orders To Save You: State Participation and Complicity in Communal Violence in Gujarat*, Vol. 14, No. 3(C), April 2002.

[5] Government of India, Nineteenth Periodic Reports of States Parties due in 2006, CERD/C/IND/19, March 29, 2006, paras. 45-50.

The Committee itself has recognized that India is in breach of its international human rights obligations in its failure to bring an end to caste discrimination. In its Concluding Observations to India's tenth to fourteenth periodic reports,[6] the Committee asserted that:

> although constitutional provisions and legal texts exist to abolish untouchability and to protect the members of the scheduled castes and tribes, and although social and educational policies have been adopted to improve the situation of members of scheduled castes and tribes and to protect them from abuses, widespread discrimination against them and the relative impunity of those who abuse them point to the limited effect of these measures.[7]

While tribal peoples in India, *adivasis*, face similar forms of discrimination, this report limits itself to caste-based discrimination based against Dalits or so-called untouchables.

Sources Used in this Report

This report draws on extensive investigations on the issue of caste discrimination conducted by Human Rights Watch in India; on information made publicly available by the Government of India through *inter alia*, a 2004 report by the NHRC on the "Prevention of Atrocities Against Scheduled Castes;"[8] reports by the National Commission on Scheduled Tribes and Schedules Castes, the National Commission on Women, and the Annual Reports to the Protection of Civil Rights Act, 1955,[9] and the Prevention of Atrocities Act, 1989; [10] and on Indian media and NGO reports, among other sources.[11] Where relevant the report also

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[6] Committee on the Elimination of Racial Discrimination, "Consideration of Reports Submitted by State parties under Article 9 of the Convention, Fourteenth Periodic Report of State parties due in 1996, India," CERD/C/299/Add.3, April 26, 1996, http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/a035833a480e4514802565530037bf7e?Opendocument (accessed February 7, 2007).

[7] Report of the Committee on the Elimination of Racial Discrimination, Fifty-first session, A/51/18, 1996, http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/76ebd2611b2261d2c12563e90058d7d7/$FILE/N9625738.pdf (accessed February 7, 2007), para. 361.

[8] National Human Rights Commission, "Report on Prevention of Atrocities against Scheduled Castes," 2004, [hereinafter "NHRC Report"].

[9] Annual Report on The Protection Of Civil Rights Act, 1955 For The Year 2002 (Twenty Second Report) Government Of India, Ministry Of Social Justice And Empowerment, New Delhi, http://socialjustice.nic.in/schedule/ar-pcr.pdf (accessed February 7, 2007).

[10] Annual Report on The Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 For The Year 2002 (Nineteenth Report) Government Of India, Ministry Of Social Justice And Empowerment, New Delhi, http://socialjustice.nic.in/schedule/ar-poa.pdf (accessed February 7, 2007).

[11] This report also relies on sources provided by the National Campaign on Dalit Human Rights (NCDHR), a network of Indian NGOs that has worked on caste discrimination issues for the past eight years. The report draws in particular from the case papers submitted in the

draws attention to information from UN special procedures and treaty bodies that have noted with concern the prevalence of caste discrimination in India.

Availability of Information from the Government of India

The Indian government does not provide prompt and sufficient information on the situation of Dalits. Governmental agencies in India and the Indian Parliament itself have failed to make statistics available to the public in a timely fashion. In general, there are routine delays of between two to four years in the writing and tabling of reports from various national commissions. For example, at this writing, the most recent statistics available from the National Commission on Scheduled Caste and Scheduled Tribes date from 2001-02 and were only made publicly available in 2004.

UN treaty bodies have repeatedly exhorted the Indian government to conduct periodic surveys on the reality of descent-based discrimination and provide both qualitative and quantitative data disaggregated by caste and gender in its reports to the committees, so far to no avail. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has pointed to the Indian government's tendency to provide "very old" information.[12] The State Party's failure to collect and record information on the enjoyment of human rights by Dalits is in itself suggestive of the government's inattention to the issue of caste discrimination.

National Public Hearings held by NCDHR in 2000 and the NCDHR's "Response to the Special Rapporteur's Questionnaire on Work and Descent Based Discrimination" [hereinafter "NCDHR Response to the Special Rapporteur's Questionnaire"]. This report further draws information from a study published in 2006 on the forms and prevalence of "untouchability" in rural India, which is based on an extensive survey of 565 villages in 11 Indian states. See generally, Ghanshyam Shah et al., *Untouchability in Rural India*, (New Delhi: Sage Publications, 2006). The report was co-authored by Ghanshyam Shah (Netherlands Institute for Advanced Study in the Humanities and Social Sciences, Wassenaar), Harsh Mander (Centre for Equity Studies, Delhi), Sukhadeo Thorat (University Grants Commission, Delhi), Satish Deshpande (Institute of Economic Growth, Delhi), and Amita Baviskar. The report is based on investigations conducted in 2001-2002 and was published by Action Aid India in 2006.

[12] The statistics to which the Government cites in its October 2005 report to CEDAW are very dated, with 1971 to 1991 figures for Dalit women's literacy level and figures from 1999 to 2000 for the incidence of poverty among Dalits. India's Combined second and third periodic reports to CEDAW, October 19, 2005, CEDAW/C/IND/2-3 para.110 ("The female literacy level amongst SC [Scheduled Caste] women has improved markedly from 6.44 percent in the year 1971 to 23.76 in the year 1991") and Ibid., para. 211 ("Disparity on the basis of caste shows that in 1991 as against an overall literacy rate of 52.2 percent that for the SCs…was 37.4 percent"). *See also* Ibid., at para. 111 ("[T]he incidence of poverty amongst SCs still continues to be very high with 36.25 percent in rural areas and 38.47 percent in urban areas, when compared to 27.09 and 23.62 percent respectively, in respect of total population in 1999-2000").

IV. Response to India's denial of ICERD's prohibition of discrimination on the basis of caste

> *Article 1: In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*

In response to the Committee's request that the Government of India submit information on issues pertaining to Scheduled Castes and Scheduled Tribes, India's periodic report states that "'caste' cannot be equated with 'race' or covered under 'descent' under Article 1 of the Convention."[13] As a result of this position, the periodic report contains no information on Dalits in India and the State Party provides that "As a matter of courtesy to the members of the Committee, if it so desires, the Government of India would be happy to provide information relating to Scheduled Castes and Scheduled Tribes to them though not as a reporting obligation under CERD."[14]

India's position directly contradicts the Committee's interpretation of Article 1 in General Recommendation XXIX that "discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status."[15] Furthermore, in its Concluding Observations on the reports submitted by India in 1996, the Committee affirmed "that the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention."[16] In support of this interpretation, the Special Rapporteur on contemporary forms of racism,

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[13] Government of India, **Fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth periodic reports of the Republic of India, due on January 4, 1998, 2000, 2002, 2004, and 2006 submitted in one document on January 26, 2006, CERD/C/IND/19, para. 16 (March 29, 2006).**

[14] Ibid., para. 17.

[15] CERD, General Recommendation XXIX (2002) – *Article 1(1) regarding descent*, para. 7.

[16] Report of the Committee on the Elimination of Racial Discrimination, A/51/18, 1996, http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/76ebd2611b2261d2c12563e90058d7d7/$FILE/N9625738.pdf (accessed February 7, 2007), para. 352.

racial discrimination, xenophobia, and related intolerance has included investigations on caste-based discrimination in his mandate.[17]

Despite the Government of India's exclusion of caste discrimination in its periodic report to the Committee, the Government has recognized it as an issue in its reports to other international treaty monitoring bodies. In 2000 the CEDAW Committee expressed its concern "with the continuing discrimination, including violence, suffered by women of the Dalit community, despite the passage of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989."[18] In response, the Government of India included the situation of Dalit women in its recent submission of its combined Second and Third periodic reports to the CEDAW Committee.[19]

Nevertheless, the discussion of Dalit women in this report remains cursory, addressing the issue of violence against Dalit women by simply noting the passage of the Protection of Civil Rights Act, 1955, and the Prevention of Atrocities Act, 1989.[20] While the Government details its efforts on other issues in greater detail—including education,[21] segregation,[22] manual scavenging,[23] bonded labor,[24] and lack of access to land[25]—the extent to which these issues remain a problem in India is alarmingly minimized.

Caste discrimination in India has also been raised as an issue of serious concern by a number of other treaty bodies and special procedures. In 1997 the Human Rights Committee noted that scheduled castes in India "continue to endure severe social discrimination and

[17] The attention of the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia, and related intolerance ("Special Rapporteur on racism") was first drawn to the situation of Dalits in India in 1996 (E/CN.4/1997/71, para. 127). In 1999, The Special Rapporteur on racism [Mr. Maurice Glèlè-Ahanhanzo (1993 – 2002)] reported to the Commission on Human Rights that specific attention should be given to the situation of "untouchables" in India (E/CN.4/1999/15, January 15, 1999, para. 100). For recent inclusions of caste discrimination in the Special Rapporteur on racism's reports, *see* e.g., [Mr. Doudou Diène (2002 – present)] Updated Study 2006 (62nd CHR session), Report para. 17 (E/CN.4/2006/54) (referring generally to caste systems in Asia and Africa as hierarchical systems of discrimination equivalent to racial discrimination), and Questionnaires to India, para. 17 (E.CN.4.2005/18) (citing a letter of allegation jointly sent by the Special Rapporteur on racism and the Special Rapporteur on violence against women to the Government of India concerning an alleged attack by a group of 200 people on a Dalit settlement in Kalapatti village, Coimbatore district, Tamil Nadu, on May 16, 2004).

[18] CEDAW's Concluding Observations: India, (2000), para. 74.

[19] India's Combined second and third periodic reports to CEDAW, October 19, 2005, CEDAW/C/IND/2-3.

[20] Ibid., para.20.

[21] Ibid., para. 98.

[22] Ibid., para. 99.

[23] Ibid., para. 100.

[24] Ibid., para. 101.

[25] Ibid., para. 102.

to suffer disproportionately from many violations of their rights under the [ICCPR], *inter alia* inter-caste violence, bonded labour and discrimination of all kinds." And as recently as 2004 the Committee on the Rights of the Child was "deeply concerned at persistent and significant social discrimination against children belonging to Scheduled Castes and Tribes and other tribal groups."[26] Additionally, the UN Special Rapporteurs on education,[27] adequate housing,[28] the right to food,[29] violence against women,[30] and torture[31] have all included investigations on caste-based discrimination in their mandate and have cited India as a country of particular concern.

Because one's caste can be determinative of one's occupation, caste discrimination is also referred to as discrimination on the basis of "work and descent." The UN Sub-Commission on the Promotion and Protection of Human Rights passed a resolution in August 2000 reaffirming that discrimination based on work and descent is prohibited under international human rights law.[32] In his 2001 report commissioned by that same resolution, Sub-Commission expert R.K.W. Goonesekere underscored that caste systems are inherently economic and social in their consequences and represent a deeply oppressive form of work and descent-based discrimination.[33] In 2004 the Sub-Commission appointed two

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[26] Convention on the Rights of the Child, "Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations, India," CRC/C/15/Add.228, (2004), http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/35e5ebb72fcfadbac1256e83004a29a8/$FILE/G0440552.pdf, para. 27 (accessed February 7, 2007).

[27] Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, Economic, Social and Cultural Rights: Girls' right to education (62nd session) February 8, 2006, paras. 82-85 (highlighting the double discrimination faced by Dalit girls and its impact on their right to education).

[28] Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Miloon Khotari, Annual Report 2005 (61st CHR session) March 3, 2005, para. 62 (concerned with the human rights violations of Dalits because they "are prevented from owning land and are forced to live on the outskirts of villages, often on barren land," and "land reforms intended to benefit the rural poor and Dalits have been ineffective due to weak legislative provisions, inadequate implementation, and a lack of State commitment").

[29] Special Rapporteur on the right to food, Report of Mr. Jean Ziegler (62nd CHR session), Mission to India, para. 11 (concerned that scheduled castes and tribes "suffer most from hunger and malnutrition," and discrimination forces Dalits into bonded labor, prevents them from owning land and restricts them from using public facilities, like village wells).

[30] Special Rapporteur on violence against women, its causes and consequences, Report of Dr. Yakin Erturk (61st CHR session), Communications to and from Governments (concerned with attacks on Dalits by upper-caste persons). Report of Ms. Radhika Coomaraswamy (57th CHR Session), January 23, 2001, para. 85 (concluding from reports she received that women from certain castes and ethnic or religious minorities appear to be at risk of being targeted by the police).

[31] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of Mr. Theo van Boven (61st Session), March 30, 2005, pp. 773, 784, 1172 (reporting on instances of police abuse of Dalits).

[32] See *Discrimination Based on Work and Descent*, Sub-Commission on Promotion & Protection of Human Rights. Resolution 2000/4 (52nd Session), U.N. Doc. E/CN.4/SUB.2/RES/2000/4 (2000).

[33] *Prevention of Discrimination and Protection of Indigenous Peoples and Minorities: Working Paper by Mr. Rajendra Kalidas Wimala Gooneskere on the Topic of Discrimination Based on Work and Descent, Submitted Pursuant to Sub-Commission Resolution 2000/4*, Sub-Commission on Promotion & Protection of Human Rights (53rd Session), U.N. Doc. E/CN.4/Sub.2/2001/16 (2001) (indicating that:

Rapporteurs to undertake "a comprehensive study on discrimination based on work and descent." The Rapporteurs were tasked with: determining the impact that the practices and policies of governments, local authorities, private sector entities, schools, religious institutions, and the media have had on discrimination based on work and descent; obtaining information on existing measures taken by governments, national human rights groups, the UN, and NGOs to combat discrimination based on work and descent; and drafting a set of principles or guidelines setting forth the measures necessary to effectively eliminate discrimination based on work and descent. The appointment of the Rapporteurs was approved by the CHR at its 61st Session in April 2005.[34]

> Discrimination based on work and descent is a long-standing practice in many societies throughout the world and affects a large portion of the world's population. Discrimination based on descent manifests itself most notably in caste- (or tribe-) based distinctions. These distinctions, determined by birth, result in serious violations across the full spectrum of civil, cultural, economic, political, and social rights.

The report also provides numerous examples of such violations.

[34] *Discrimination Based on Work and Descent*, Sub-Commission on Promotion & Protection of Human Rights. Resolution 2004/17, 56th Session, U.N. Doc. E/CN.4/Sub.2/2004/L.8 (2004) (reaffirming Resolution 2000/4 and appointing two Special Rapporteurs to prepare "a comprehensive study on discrimination based on work and descent"), approved by U.N. Commission on Human Rights, 61st Session (2005).

V. Article 2: States Parties' obligation to end caste-based discrimination

A. Condemn caste discrimination and undertake to pursue by all appropriate means a policy of eliminating caste discrimination

> *Article 2 (1): States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races...*

The Government of India has not refrained from committing and supporting discriminatory acts against Dalits, and has failed to implement measures to end caste discrimination. India has failed to encourage integrationist movements and has not provided for the development and protection of Dalits, who as a result remain an extremely marginalized social group.

1. *Refrain from committing discriminatory acts*

> *Article 2 (1) (a): Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.*

India's failure to ensure that all public authorities and public institutions do not engage in caste-based discrimination is widespread. The discussion below focuses on two examples that exemplify this failure: treatment of Dalits by the police and discrimination in the provision of disaster relief. Further examples of this failure are dealt with throughout the remainder of the Report.

a. Dalits and law enforcement

In 2004 the NHRC characterized the law enforcement machinery as the greatest violator of Dalits' human rights.[35] This problem is not a recent one. In 1979 India constituted the National Police Commission to analyze problems in police performance.[36] However, the Commission's recommendations, which include recommendations specific to police abuse of Dalits, have still not been adopted. Police continue to detain, torture, and extort money from Dalits without much fear of punishment.[37] According to the NHRC, custodial torture and killing of Dalits, rape and sexual assault of Dalit women, and looting of Dalit property by the police "are condoned, or at best ignored ..."[38] Dalits who encounter the police are forced to listen to casteist name-calling, unfounded accusations on their character, and threats against their family and friends.[39]

While under-reporting of police treatment (including torture) of Dalits means that the real magnitude is unknown, the national Preventing Torture project initiated by People's Watch, a Tamil Nadu-based NGO, asserts that Dalits suffer disproportionately at the hands of the police and are at high risk of being subjected to torture while in police custody.[40] The Prevention of Atrocities Act, 1989, and the Supreme Court guidelines set out in the *D.K. Basu* case (1997)[41] are available legal tools to prevent torture, illegal detention, or improper

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[35] NHRC Report, p. 111.

[36] Human Rights Watch, *Broken People*, p. 32.

[37] Ibid., p. 33.

[38] NHRC Report, Section VI, p. 130.

[39] Vishwanathan, S., "A Tale of Torture," *Frontline*, 2-15 August 2003. http://www.hinduonnet.com/fline/fl2016/stories/20030815002504800.htm (accessed February 7, 2007); Vishwanathan, S., "Members of the *denotified tribes* continue to bear the brunt of police brutality," *Frontline*, June 8-21, 2002.

[40] *Preventing Torture: From Public Awareness to State Accountability (Grant Application Form)* p. 7 (on file with CHRGJ).

[41] *D K Basu v State of West Bengal* (1997) 1 SCC 416*.* The Supreme Court of India laid down a series of guidelines in the *D K Basu* case designed to be preventative measures against torture in all cases of arrest and detention until such time as legislative provisions are made. The Court ordered that the guidelines are to be strictly followed in all cases. The guidelines include: (i) accurate, visible and clear identification and designation of personnel making arrests; (ii) preparation of a memo of arrest containing the time and date of arrest to be witnessed by a member of the family of the arrestee or a respectable person of the locality from where the arrest is made and countersigned by the arrestee; (iii) a right of arrestees to have someone concerned with their welfare be made aware of the fact of their arrest; (iv) a right to have the time, place of arrest and venue of custody notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest; (v) a right of arrestees to be informed of the right to have someone informed of his arrest or detention as soon as he is put under arrest or detained; (vi) a requirement to keep a record of the name of the arrestee and the person informed of the arrestee's detention; (vii) a right of the arrestee to be physically examined upon his request, to have his injuries recorded, and for the "Inspection Memo" to be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee; (viii) examination of the detainee by a trained doctor every 48 hours during custody; (ix) a requirement for copies of all documents, including the memo of arrest, refereed to in the guidelines to be sent to the Illaqa [District] Magistrate for his records; (x) a right of access of arrestees to a lawyer during, though not throughout, interrogation; (xi) and maintenance of a control room in all district and State headquarters, where information regarding the arrest and the place of custody of

interrogation of Dalits. Jurists, human rights activists, and civil rights groups, however, claim that a lack of political will allows the problem of torture and other forms of custodial abuse to continue unchecked.

i. Disproportionate targeting of Dalits

Dalits are disproportionately targeted by the police for a number of reasons. According to the NHRC, under a theory of collective punishment, the police will often subject entire Dalit communities to violent search and seizure operations in search of one individual.[42] Dalit communities may also be perceived by the police as inherently criminal.[43] Dalits and other poor minorities are disproportionately represented among those detained and tortured in police custody because most cannot afford to pay police bribes.[44] Dalits are also likely victims of police misconduct because they are rarely informed of their rights, rarely have access to an attorney, and are not able to afford bail.[45] Police officers' deeply embedded caste bias (most officers belong to the dominant castes)[46] and a general lack of familiarity with legislative protections for Dalits further compound the problem.[47]

State agencies have also colluded with private actors from dominant castes in committing human rights violations against Dalits.[48] Through investigations conducted in 1997 in the state of Bihar, for example, Human Rights Watch found that government officials acted as agents of the Ranvir Sena (a private upper-caste militia) and turned a blind eye to their killings of Dalits.[49] Soon after a massacre in Laxampur-Bathe village, Jehanabad district—in which the Ranvir Sena killed 61 Dalits, Naxalites (leftist guerrilla organizations advocating the use of violence to achieve land redistribution) retaliated by killing nine people suspected to be Ranvir Sena supporters. The police responded to the violence by harassing

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the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and displayed on a conspicuous notice board in the control room. Failure to comply with the requirements of the *D K Basu* guidelines renders the police officers concerned liable for departmental action, and for contempt of court proceedings. The requirements flow from Articles 21 and 22(1) of the Indian Constitution and thus must be strictly followed according to the Supreme Court. Ibid.

[42] NHRC Report, Section VI, p.116.

[43] Ibid., pp.116-17.

[44] Human Rights Watch, *Broken People*, p. 127.

[45] Ibid., p.154, *see also* NHRC Report, Section VI.

[46] Ibid., p.118.

[47] Ibid.

[48] Ibid., p.111 from National Campaign on Dalit Human Rights, National Public Hearing, April 18-19, 20(X), Chennai, Vol. I - Summary: Jury's Interim Observations and Recommendations, pp. 309-317.

[49] Human Rights Watch, *Broken People*, p. 43.

Dalit villagers who they accused of supporting the Naxalites.[50] Rather than capturing Sena members, State security forces reportedly helped train militia members; in some cases, police accompanied the militias during their attacks on Dalit villages,[51] disguising killings as "encounters."[52] Upper-caste militia members, and the police who colluded with them, have rarely been prosecuted for their crimes.[53]

ii. Improper use of security legislation against Dalits

Dalits are particularly vulnerable to arrest under draconian security laws. For example, in at least two states, Jharkhand and Andhra Pradesh, the Prevention of Terrorism Act 2002 (POTA)[54] was widely used against Dalits, who were targeted for their caste status rather than any involvement in criminal or terrorist activity.[55]

Dalit activists are also accused of being "terrorists," "threats to national security," and "habitual offenders," and frequently charged under the National Security Act, 1980, the Indian Explosives Act, 1884, and even older counter insurgency laws such the Terrorist and Disruptive Activities (Prevention) Act 1987 (commonly known as TADA).[56] Dalit activists are often subjected to specious prosecutions, falsified charges, and physical abuse and torture following arrest.[57] Further, following bouts of violence in Bihar between the Ranvir Sena and Naxalites, Dalits were held in preventive detention under India's Criminal Procedure Code

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[50] Ibid., pp. 64-65.

[51] Ibid., p. 43.

[52] Ibid., p. 44.

[53] Ibid.

[54] "The Prevention of Terrorism Act of 2002 (POTA) allowed the government to prosecute acts of terrorism largely outside the ordinary rules of the regular criminal justice system." Anil Kalhan, Gerald P. Conroy, Mamta Kaushal, Sam Scott Miller, and Jed S. Rakoff, "Antiterrorism And Security Laws In India: A Report To The Association Of The Bar Of The City Of New York On A Research Project For The Committee On International Human Rights," 2006, page iv. While India repealed POTA in 2004, many of the law's provisions have been preserved in other legislation and similar laws remain in place at the central and state levels. Ibid.

[55] Ibid., p. 75. A fact-finding team of Indian human rights advocates and the Indian news media examined the use of POTA in Jharkhand in early 2003. According to the Association of the Bar of the City of New York, the fact-finding team found that:

> In Andhra Pradesh, POTA was not invoked at all in the first year after its enactment, but after that, approximately 50 cases were initiated, allegedly involving between 300 and 400 individuals as of March 2004. In many of these cases, the individuals charged appear not to have been involved in any criminal activity at all, but rather have been targeted simply for their caste or tribal status alone. In other cases, the allegations against these Dalit, other lower caste, and tribal individuals under POTA appear to bear little relationship to terrorist or insurgent violence.

Ibid., pp.76-77.

[56] Human Rights Watch, *Broken People*, p. 153.

[57] Ibid., pp. 153-154.

Section 107 in excess of the maximum detention period of 24 hours.[58] Similarly, following periods of escalated violence between upper-caste community members and Dalits in Tamil Nadu between July 1995 and June 1996, many Dalit youths were arrested under preventive detention laws like the Tamil Nadu Goondas Act and the National Security Act, 1980.[59] Additionally, police also engage in what are called "encounter deaths," whereby young activists who allegedly support any of the Naxalite or radical left movement organizations are picked up, tortured to extract confessions, and then killed under the pretense of self defense.[60] Though upper-caste community members have also been picked up by the police in this manner, they are usually not subject to such harsh treatment as a result of pressure from influential people belonging to their caste.[61]

iii. Custodial abuse and torture of Dalits

Dalits, including those arrested for minor offenses, are often held in custody for long periods of time, occasionally at distant and isolated locations to avoid publicity,[62] where they are frequently deprived of food and water, subjected to verbal abuse and humiliation, severe beatings, sexual perversities, and demeaning acts. Often the injuries inflicted can prove fatal.[63] To cover up custodial deaths, police often claim that the person was killed trying to escape or that he or she died of natural causes.[64] Dalits who survive the torture often end up permanently disabled and suffer social ostracism, as well as psychological and emotional trauma.[65]

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58 While the Supreme Court of India has ruled that preventive detention cannot last for more than 24 hours, in many cases it takes 15 to 30 days to get a lawyer. Moreover, while the charges are bailable, arrested Dalits have no property or surety for the bail; as a result, they remain in jail for long periods of time. Ibid., p. 73.

59 Ibid., p. 96.

60 NHRC Report, Section VI, p. 115, citing National Campaign on Dalit Human Rights, Chennai Hearing, op. cit., 267-269.

61 Ibid.

62 Vishwanathan, S., "A Tale of Torture," *Frontline.*

63 NHRC Report, Section VI, p. 114.

64 Ibid., 114 citing SAKSHI, op. cit., pp. 90-91; National Campaign on Dalit Human Rights, Chennai Hearing, op. cit., pp 73-76; Human Rights Watch, op. cit., pp. 115-121.

65 Vishwanathan, S., "A Tale of Torture," *Frontline*; "Dalit academic 'manhandled' in police custody," *The Hindu*, August 1, 2001, p. 12; "Youth Alleges Custodial Torture," *Financial Times Information*, June 20, 2005, p. 67; Sudhakar, P., Residents protest Dalit death, allege torture," *The Hindu*, June 17, 2003, p. 50; "India: Dalit's death after police torture alleged," *The Hindu*, September 1, 2000, p. 16; Naqvi, Bobby, "Dalit tortured by cops for three days," *Hindustan Times*, September 11, 2000, p. 40; "Minor dies, alleges sexual abuse in remand home," *Indo-Asian News Service*, August 24, 2005, p. 39; Viswanathan, S., "Members of the *denotified tribes* continue to bear the brunt of police brutality," *Frontline*, June 8-21, 2002, p. 63.

Box 1: Police Abuse of Dalits detained in Tamil Nadu

In one notable incident in 2003, several Dalits were arrested on suspicion of murder and were held at the Thiruthuraippoondi and Thirukkalar police stations in Tamil Nadu between May 10 and 16. In a statement before the Tamil Nadu State Human Rights Commission, the group of Dalits described the abuse they suffered at the hands of the police. As reported by *Frontline* magazine, the statement included the following account:

> The people alleged that they were beaten up and humiliated. The police used abusive language against the complainants, called them by their caste name, beat them with lathis [batons], and kicked them, they said. When one of them asked for water, a police officer asked for a bucket of water, dipped his shoes in it and asked the person to drink it, a statement said. Another victim complained that when he asked for water, a police officer urinated into his mouth.[66]

iv. Police abuse of Dalit Women

Dalit women are particularly vulnerable to sexual assault and rape by the police.[67] As with sexual abuse of Dalit women by upper-caste men, the sexual abuse of Dalit women by the police is used as a tool to punish Dalit communities as a whole.[68] Dalit women have also been arrested and raped in custody to punish their male relatives who are hiding from the police.[69] Police also routinely sexually abuse Dalit women during police raids as a means of exerting pressure on their male family members to surrender, give false evidence, retract their complaints, or silence their protests regarding police mistreatment.[70] Investigations in

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[66] Vishwanathan, S., "A Tale of Torture," *Frontline*. In another notable incident, police officers allegedly poured petrol on a 50-year-old Dalit farmer in Barabanki, Uttar Pradesh, and burnt his private parts after beating him continuously for three days. Naqvi, "Dalit tortured by cops for three days," *Hindustan Times*. Bhim Dom, a 12-year-old Dalit boy from Bhijpur, Bihar who was sent to a remand home on charges of petty theft, committed suicide after alleging that he was regularly beaten and sexually abused by officials. "Minor dies, alleges sexual abuse in remand home," *Indo-Asian News Service*, August 24, 2005, p. 39.

[67] NHRC Report, Section VI, p. 130.

[68] Human Rights Watch, *Broken People*, p. 166.

[69] Ibid., p. 166.

[70] NHRC Report, Section VI, p. 116.

Bihar and Tamil Nadu conducted by Human Rights Watch also confirmed that women have been beaten, arrested, and sometimes tortured during violent search and raid operations on Dalit villages.[71] Medical personnel often collude in these cases by issuing false certificates that deny sexual assault or by including statements in the medical examination report that cast doubts on the credibility of the victim's complaint.[72]

The case of Ms. Lebra is illustrative of this widespread problem. Ms. Lebra, a mother of three, was accused of stealing her upper-caste neighbor's jewelry in retaliation for refusing to give him crops from her land. When she was called in by the police for questioning, the police officer began molesting her daughter. When she tried to stop him, he grabbed Ms. Lebra's hair, pushed her down onto the ground and raped her.[73]

v. *Police Extortion and Looting*

The routine practice of police extortion and looting is well documented.[74] Police targeting of Dalits comes about through:

- Illegal police raids on Dalit villages under the pretext of looking for suspects in the aftermath of caste conflicts. Human Rights Watch has documented a number of such instances.[75]
- Specific targeting of Dalit villages that enjoyed relative economic prosperity. This practice has been documented by Human Rights Watch's investigation of raids conducted in Gundupatti, Tamil Nadu in February 1998, where the police engaged in outright looting, stealing jewelry, clothes, cash, and consumables from the homes of Dalit villagers who enjoyed relative prosperity due to remittances from family members who were sent to work abroad.[76] The looting served two purposes: to line

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[71] Human Rights Watch, *Broken People*, p. 166.

[72] NHRC Report, Section VI, p. 120.

[73] "Rape of Dalit Woman at Police Station," Case Papers: Summary Jury's Interim Observations & Recommendations, National Public Hearing, April 18-19, 2000, Chennai-Tamil Nadu, Vol. 1, p. 177.

[74] Human Rights Watch, *Broken People*, p. 80. The prevalence of extortion is intimately related to the fact that many police officers need to pay large bribes to secure their position in the police force. As a result, many police officers begin their careers in severe debt that they attempt to pay off by extorting money from civilians or by engaging in outright acts of looting. Ibid., pp. 80-81. Moreover, police officers often accept bribes from upper-caste perpetrators to ignore their crimes against Dalits. NHRC Report, Section VI, p. 119.

[75] During a police raid on the village of Makarpur in Jehanabad district, Bihar, in January 1998 the police arrested and illegally detained seven young men and then extorted a sum of Rs. 5,500 (US$138) before releasing them. Ibid., p. 81. In another incident in Nagwan village, in Patna district, Bihar, two people were threatened with criminal charges unless they agreed to pay Rs. 900 (US$22.50). Ibid.

[76] Ibid., p. 83.

the policemen's pockets; and to teach Dalits that they should not strive to increase their economic status.

- The pretense of conducting *kurki-japti* (legal attachment of movable property). Such seizures do not follow the legal procedures for seizures, such as the presentation of a court order and list of materials to be seized, or the requirement that two witnesses be present during the seizure.[77]

Acts of extortion often lead to violence. For example, in 2002 in the Jhajjar district in Haryana, police allegedly killed five Dalits after failing to extort money from them. The Dalit boys, from families traditionally employed in the skinning of dead cows, apparently "refused to pay extortion money for being allowed to carry animal skins."[78] In 2003 three constables and a sub-inspector in Lucknow were suspended and charged with instigating the suicide of a Dalit man. The man committed suicide while being detained by police who were holding him with the intention of extorting money from him.[79] In addition to violence, extortion and looting may begin a cycle of borrowing by Dalits that ultimately leads to a state of bondage (see Section VIII(E)(1)(b)).

vi. Failure of police to properly register crimes against Dalits

Police systematically fail to properly register crimes under the Prevention of Atrocities Act, 1989 and the Protection of Civil Rights Act, 1995. Improper and under-registration of Dalit cases is both a result of police officers' reluctance to entertain complaints by Dalits, as well as their lack of familiarity with provisions of the relevant legislation.[80] For example, according to one study, out of 103 randomly selected atrocity cases against Dalits in the state of Andhra Pradesh from 1999 to 2003, First Information Reports (FIRs)[81] were correctly registered in only 18 cases, while 29 were not registered at all.[82] In 2002 India reported that in at least 15 states, between 0 - 2 cases had been registered under the Prevention of

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[77] Ibid., p. 81.

[78] Rahul Chhabra, "Police clueless about culprits behind Jhajjar killings," *The Economic Times*, October 19, 2002.

[79] "Cops arrested as man dies in custody," *The Economic Times*, July 4, 2003.

[80] NHRC Report, Section IV, p. 45.

[81] FIRs (First Information Reports) are the initial reports of a crime recorded by the police.

[82] NCDHR Response to the Special Rapporteur's Questionnaire, p. 27 (citing the results of a study conducted by the Andhra Pradesh-based NGO Sakshi).

Atrocities Act, 1989.[83] Similarly, the Government of India reported that in the same year that no cases were registered under the Protection of Civil Rights Act in 24 states and union territories.[84] The National Commission for Scheduled Castes and Scheduled Tribes has concluded that "a large number of cases of atrocities go unregistered, mainly because of reluctance on the part of police officers to register the cases."[85] The NHRC has confirmed that the lack of registered cases does not represent an actual reduction in the practice of "untouchability."[86]

In addition to non-registration of cases, police routinely engage in improper registration of cases. Dalit cases are often generally registered under the Indian Penal Code, instead of the Protection of Civil Rights Act, 1955 and the Prevention of Atrocities Act, 1989.[87] Moreover, in a distorted interpretation of the Prevention of Atrocities Act, police officials require explicit mention of abuse by caste name for all atrocities.[88]

Improper and under-registration of Dalit cases adversely affects case outcomes.[89] Cases are less likely to be prosecuted and even when pursued, are more likely to result in acquittal when the police have failed to collect evidence. Perpetrators, if convicted, are punished with a lesser sentence, and/or are likely to be released on bail.[90] Further, the appropriate relief may not be available when the proper sections of the law are not cited.[91] More broadly, these problems have caused a loss of faith in law enforcement, which further diminishes the number of cases registered.[92]

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[83] Annual Report On The Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 For The Year 2002 (Nineteenth Report) Government Of India, Ministry Of Social Justice And Empowerment, New Delhi, p. 4-5. http://socialjustice.nic.in/schedule/ar-poa.pdf (accessed February 7, 2007).

[84] Annual Report On The Protection Of Civil Rights Act, 1955 For The Year 2002 (Twenty Second Report) Government Of India, Ministry Of Social Justice And Empowerment, New Delhi, p. 2 http://socialjustice.nic.in/schedule/ar-pcr.pdf (accessed February 7, 2007).

[85] National Commission on Scheduled Castes and Scheduled Tribes, Sixth Report, 1999-2000 & 2000-2001, New Delhi, p. xii, cited in NCDHR Response to the Special Rapporteur's Questionnaire, p. 4.

[86] NHRC Report, Section IV, p. 25 (referring to the lack of registered cases under the Protection of Civil Rights Act).

[87] NCDHR Response to the Special Rapporteur's Questionnaire, p. 4; NHRC Report, Section IV, p. 45 (citing Information gathered from the Senior Research Officer, National Commission for Scheduled Castes and Scheduled Tribes).

[88] NHRC Report, Section VI, p. 118.

[89] There are numerous points in the processing of a complaint at which the police can improperly affect the case outcome. These include not registering the case; pressuring the complainant to compromise; lodging false counter charges against victims; refusing to register cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 or not citing the proper sections of the Act; registering the First Information Report (FIR) but not arresting the accused; assigning a lower ranked police officer against the specific stipulation of Rule 7(1); delaying the investigation and filing of a charge sheet; and the granting of bail in contravention to stringent Act requirements. NHRC Report, Section VI, p. 117 (citing National Campaign on Dalit Human Rights, Chennai Hearing).

[90] Ibid., p. 117.

[91] Ibid., p. 117.

[92] Ibid., Section IV, p. 25.

b. Discrimination in the provision of disaster relief

According to separate investigations by the National Campaign on Dalit Human Rights and Human Rights Watch, India discriminated against Dalits in distribution of aid in the wake of two of India's largest natural disasters in recent years: the Gujarat earthquake in January 2001 and the Indian Ocean tsunami in December 2004.

Following the Gujarat earthquake in January 2001, while the government allocated equal amounts of compensation and food supplies to all communities,[93] agencies did not ensure that the assistance went to Dalit communities.[94] Dalit and Muslim populations also did not have the same access to adequate shelter, electricity, running water, and other supplies available to the upper-caste population, to whom the government had provided far superior shelter and basic amenities.[95] Reconstruction projects were also segregated along caste and religion lines.[96]

Following the tsunami in December 2004, the NCDHR and the Human Rights Forum for Dalit Liberation-Tamil Nadu reported that during the initial stages of the relief process, Dalits were not provided proper and adequate guidance on how to gain admission to relief camps, were not given a fair share of relief aid, and were sometimes abused when they demanded equal treatment.[97] Dalits' political voicelessness prevented them from convincing authorities of their losses who maintained that only higher-caste fishing communities were affected by the tsunami.[98]

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[93] Human Rights Watch, *Caste Discrimination: A Global Concern, Earthquake in Gujarat: Caste and its Fault-Lines*, September 2001, http://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm#P145_19883 (accessed February 7, 2007), p. 6.

[94] "Relief and Discrimination after the Gujarat Earthquake," Dalit Solidarity Network-UK & Voice of Dalits International (VODI) (May 2001).

[95] Human Rights Watch, *Caste Discrimination: A Global Concern*, p. 6.

[96] Ibid.

[97] Human Rights Watch, *After the Deluge: India's Reconstruction Following the 2004 Tsunami*, Vol. 17, No. 3, May 2005, http://hrw.org/reports/2005/india0505/india0505.pdf (accessed February 7, 2007), p. 25.

[98] NCDHR Response to the Special Rapporteur's Questionnaire, p. 17; Human Rights Watch, *After the Deluge*, p. 2. Members of the fishing communities prohibited Dalits from staying in common camps, from taking shelter in community halls or temples, from using the drinking water tanks provided by UNICEF, and from accessing food provided by relief organizations or the local community. NCDHR Response to the Special Rapporteur's Questionnaire, p. 17. Authorities in parts of Andhra Pradesh and Tamil Nadu provided Dalits with less relief and support than other victims, and Dalit areas were the last to have electricity and water supplies restored during rehabilitation efforts. There were also allegations that officials discriminated against Dalits in the provision of financial assistance to the families of the deceased. "India – End Caste Bias in Tsunami Relief," Human Rights Watch Press Release, January 14, 2005, http://hrw.org/english/docs/2005/01/14/india10019.htm (accessed February 7, 2007).

2. Refrain from supporting private actors committing discriminatory acts and prohibit and bring to an end caste-based discrimination by private actors

> *Article 2 (1) (b): Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations.*
>
> *Article 2 (1) (d): Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization.*

The Committee has clarified the content of the States Parties' obligations with respect to private actors, stating that "to the extent that private institutions influence the exercise of rights or the availability of opportunities, the State Party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination."[99] In its periodic report India cites to sections of the Indian Penal Code that make punishable acts and statements by private actors instigating or promoting caste (and other forms of) discrimination.[100] A number of other legislative efforts to end caste-based discrimination also apply to private actors as well as State actors. However, in relation to private actors' treatment of Dalits, the State Party has, *inter alia*, failed to:

- ensure the security of Dalits, including through its failure to protect Dalits against retaliatory attacks (see Section VIII (B)(1)), its failure to properly register crimes against Dalits (see Section V(A)(1)(a)(vi)), and through its collusion with private actors and militias engaging in violence (see Section V(A)(1)(a)(i));
- address infringements on social, cultural, and economic rights by private actors, including through failing to deal with violations of the right to work by private employers, including discrimination in hiring and wage payments (see Section VIII(E)(1)(f)), social and economic boycotts against Dalits (see Section VIII(E)), prohibitions on inter-marriage (see Section VIII(D)(3)(a)), and infringements on rights to equal participation in cultural activities (see Section VIII(E)(6));

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[99] CERD General Comment XX – *Non-discriminatory implementation of rights and freedoms (Art. 5)*, para. 5.

[100] Government of India, Fifteenth, Sixteenth, Seventeenth, Eighteenth, and Nineteenth Periodic Reports to the Committee on the Elimination of Racial Discrimination, CERD/C/IND/19, paras. 51-52.

- ensure the exercise of political rights such as the right to vote and stand for election and freedom of peaceful assembly and association, by failing to address practices such as booth-rigging and booth capturing, denial of access to polls, and intimidation and violence to discourage participation in local elections (see Section VIII(C));
- end the practice of segregation, including in housing arrangements and in privately run businesses (see Sections VI and VIII(F)); and
- eradicate propaganda inciting caste-based discrimination (see Section VII).

The nexus between political leaders and upper-caste community members account to some extent for these failures and for the disincentive to address violations by private actors. For example, social and economic legislation to further Dalits' rights adversely affects the interests of the classes and castes to which political leaders either belong or represent; political leaders are either landowners themselves or have close political and social links with land-owners, and those relying on cheap or bonded labor, including child labor.[101]

3. Reform state policies

> *Article 2 (1) (c): Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.*

While the 1950 Constitution abolished the practice of "untouchability" in all its forms, and while specific legislation has been adopted to address caste-based discrimination, the information detailed in this report demonstrates that caste-based discrimination by State and non-State actors persists throughout India and that the State Party has failed to undertake sufficient law and policy review of the under-implementation of these measures.

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[101] NHRC Report, Section VI, p. 125.

4. Encourage integrationist movements and other means of eliminating barriers between castes, and discourage anything that strengthens caste division

> *Article 2 (1) (e): Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.*

The Government of India has failed to encourage integrationist movements or eliminate barriers between castes. To the contrary, the government has turned a blind eye to segregation in schools (see Sections VIII(E)(5)(a) and VIII(F)(1)(c)), has encouraged segregation in housing (see Section VI(A)), including in relief camps following natural disasters (see Section V(A)(1)(b)), and has failed to faithfully implement constitutional and legislative abolitions of "untouchability" practices. Additionally, as Dalits increasingly organize to protest their discriminatory treatment and claim their democratic rights, the government has improperly used security legislation against Dalit activists (see Section V(A)(1)(a)(ii)), consistently failed to protect Dalits against retaliatory attacks by upper-caste groups, including rape of Dalit women (see Section VIII(B)), and failed to deal with social and economic boycotts against Dalits (see Section VIII(E)), thereby further discouraging integrationist movements.

B. Ensure the development and protection of certain groups or individuals belonging to them

> *Article 2 (2): States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.*

The extreme marginalization and persecution endured by Dalits in India necessitate efforts by the government to ensure their development and protection. In its periodic report, the Government of India cites to Article 16 of the Indian Constitution, which empowers the State to make provision for the reservation of posts in government jobs in favor of any backward class of citizens.[102] Accordingly, under constitutional provisions and various laws, India grants Dalits a certain number of privileges, including "reservations" (quotas) in education, government jobs, and government bodies.[103] Like many of the protective measures described in this report, the reservation policy has not been successfully implemented for Dalits. Additionally, there has been widespread public opposition to reservations for Dalits in local government bodies, often leading to violence (see Section VIII(C)(2)), and in government jobs that are highly coveted because of the economic security they are perceived as offering,[104] as are seats in higher education. Finally, Dalits who convert to Christianity or Islam risk losing their "scheduled caste" status and the few benefits it affords (see Section VIII(D)(5)(a)).

1. Failure of compensatory discrimination mechanisms and discrimination in public employment

Caste-based occupational distribution is reinforced in reserved government employment.[105] The NHRC reports that Dalits occupy over 65 percent of the total government posts for *safai karmacharis* (sweepers) and only 16.7 percent of non-sweeper posts.[106] Dalits are also discriminated against when being considered for promotions. Recently, the government has moved to create quotas for promotions for scheduled castes and other backward castes. While the Supreme Court upheld the move, it required that governmental authorities prove

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[102] Government of India, Fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth periodic reports of the Republic of India, due on 4 January 1998, 2000, 2002, 2004, and 2006 submitted in one document on Jan. 26, 2006, CERD/C/IND/19, para. 101 (March 29, 2006).

[103] Human Rights Watch, *Broken People*, p. 23. India's policy of reservations is an attempt by the central government to remedy past injustices related to low-caste status. To allow for proportional representation in certain state and federal institutions, the constitution reserves 22.5 percent of seats in federal government jobs, state legislatures, the lower house of parliament, and educational institutions for scheduled castes and scheduled tribes. Ibid., p. 40. An amendment to the Constitution also enables reservations for scheduled castes and scheduled tribes in village councils and municipalities, and no less than one-third of reserved seats to be allocated to scheduled caste and scheduled tribe women. Constitution of India, Articles 243D and 243T.

[104] Sanjoy Majumder, "Indian Court Upholds Caste Quotas," *BBC News*, Oct. 19, 2006. http://news.bbc.co.uk/2/hi/south_asia/6067504.stm (accessed February 7, 2007).

[105] NHRC Report, Section VII, p. 137.

[106] Ibid., p. 137.

that these groups were poorly represented in government positions, that quotas be capped at 50 percent, and that prosperous lower-caste employees be excluded from the plan.[107]

Reservations in higher education continue to be met with a great deal of resistance leading to under-enforcement.[108] In the country's 256 universities and about 11,000 colleges funded by the University Grants Commission (an apex body of the Government of India), Dalits and tribals comprise only 2 percent of the teaching positions; about 75,000 teaching positions reserved for these communities remain vacant.[109]

2. Proposals to extend reservations to other sectors

In its 2004 report the NHRC recommended that the government identify institutions that had not accepted reservations—including judiciary and defense forces—and develop measures to ensure that Dalit candidates had the opportunity to compete for these positions.[110] In 2002 the Supreme Court had one Dalit out of 26 judges, while the High Courts had 25 Dalits out of 625 positions[111] (see also Section VIII(A)(3)(b)). The National Commission for Scheduled Castes and Scheduled Tribes has stated that the private sector, which continues to enjoy government patronage—through concessional land, financing, and excise and sales tax relief—should also be brought under the purview of the reservation policy.[112]

According to government estimates in 2000, the unemployment rate for Dalits and tribals was double that of non-Dalits/tribals. Additionally, public sector divestment to private owners is estimated to have left 200,000 Dalit employees jobless. Dalits continue to be significantly underrepresented in most professional strata. Dalit representation in India's high industries, exports, imports, and electronic industries sectors is dismal.[113] In response, civil society and government actors have supported the proposed extension of reservations in the private sector. However, there remains strong opposition to this proposal, both from

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[107] Majumder, "Indian Court Upholds Caste Quotas," *BBC News*.

[108] NHRC Report, Section VII, p. 139.

[109] Ibid., p. 139.

[110] NHRC Report, Section VII, p. 141.

[111] "President's No on Chhattisgarh Judges," *Indian Express*, February 3, 2002.

[112] Human Rights Watch, *Broken People*, p. 4 (citing National Commission for Scheduled Castes and Scheduled Tribes, Highlights of Fourth Report (New Delhi, Government of India, 1998)).

[113] NCDHR Response to the Special Rapporteur's Questionnaire, p. 20.

private employers and certain political parties. Private employers have, for example, criticized the government for failing to provide Dalits adequate opportunities in education and instead imposing upon the private sector the obligation to employ individuals they deem unqualified.[114]

3. *Poor implementation of development programs*

The Government of India has also established several programs for the development of Dalits.[115] According to the NHRC, however, the beneficial impact of these programs has been hindered by:

- inadequate investment of public resources;
- non-utilization or diversion of funds earmarked for Dalit development;
- lack of programs specifically targeted to Dalit development;
- poor preparation of such projects; and
- a lack of monitoring of development programs, leading to the failure of many such programs to reach their target groups.[116]

The anti-Dalit bias of personnel in charge of implementing these programs has also hindered their effectiveness.[117] Moreover, Dalits rarely participate in the formulation and implementation of development projects. Many Dalits are also unaware of the existence of such programs, further restricting their participation.[118]

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[114] Priyanka Bhardwaj, "India debates private sector quotas", *Asia Times Online*, February 7, 2006. http://www.atimes.com/atimes/South_Asia/HB07Df01.html (accessed February 7, 2007).

[115] Dalit development programs have included the Special Component Plan for Scheduled Castes (mechanism for ensuring that states allocate adequate resources to Dalit development), Special Central Assistance to Special Component Plan for Scheduled Castes (supplement to states' efforts by providing additional support to Dalit families to enhance their productivity and income), and the Special Component Plan by the Central Ministries (plan in which Central Ministries are to ensure that 15 percent of their Five Year and Annual Plans goes toward Dalit development), as well as financial institutions, employment generation programs, and welfare programs targeted toward Dalits. NHRC Report, Section VIII, pp. 162-72.

[116] Ibid., pp. 173-74.

[117] Ibid., p. 175.

[118] Ibid., pp. 175-76.

4. *Inadequate development and protection of Dalit women*

The obligation to ensure the development and protection of certain groups or individuals belonging to them is especially relevant for those individuals within the Dalit community who face multiple forms of discrimination. Dalit women face multiple axes of discrimination, with the NCDHR asserting:

> Dalit women are often described as the oppressed of the oppressed, the violence and oppression on them being more complex and manifold even compared to Dalit men. There is [an] inseparable relationship between caste status, occupation and discrimination. The Dalit woman faces triple discrimination because she is an untouchable, of a poor class and is a woman.[119]

CERD has also noted that forms of racial discrimination have a "unique and specific impact on women."[120] For more on the violence against Dalit women see Sections V(A)(1)(a)(iv) and VIII(B)(2).

a. Lack of gender equity

Dalit women have unequal access to services, employment opportunities, and justice mechanisms as compared to Dalit men. In relation to employment opportunities, Dalit women are allotted some of the most menial and arduous tasks and experience greater discrimination in the payment of wages than Dalit men.[121] The employment opportunities of professional Dalit women may also be limited by discriminatory practices that deprive facilities run by Dalit women of a customer or patient base[122] or require accommodation of requests of upper-caste community members.[123] In relation to services, Dalit women have

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[119] NCDHR Response to the Special Rapporteur's Questionnaire, p. 14.

[120] CERD General Comment XXV - *Gender-related dimensions of racial discrimination*, para. 3.

[121] Shah, et al., *Untouchability in Rural India*, pp. 117-18. For example, in Kerala, Dalit women report that they are tasked with breaking the roasted cashew nuts produced in factories—a job which over time deforms and stains their palms and fingers. Ibid.

[122] Ibid. In Tamil Nadu, for example, Dalit women report that the upper-caste families do not send their children to the community centers that are run by Dalit women. Ibid.

[123] The study also reports that in the village of Telipalash (Kalahandi, Orissa), a Dalit woman, Pralaya Senapti, is the auxiliary nurse-midwife—great achievement for a Dalit woman. However, after administering medicines and immunizations to upper-caste women and children in the non-Dalit hamlet, her patients bathe and change their saris to purify themselves after she leaves. They ask Senapti to

less access to education and health facilities,[124] ensuring that their literacy rate, and nutrition and health standards fall far below that of Dalit men and non-Dalit men and women.[125] The number of Dalit women in decision-making positions is also very low, and in some central services, Dalit women are not represented at all.[126] Benefits of various development programs for Dalits, such as distribution of land and other productive assets have essentially gone to Dalit males and have not improved the status of Dalit women.[127] Investment in projects targeted to the development of Dalit women is also far lower as compared to those for men.[128]

b. Forced Prostitution – *Devadasi* system

The practice of *devadasi*, in which a girl, usually before reaching the age of puberty, is ceremoniously dedicated or married to a deity or to a temple, continues in several southern states including Andhra Pradesh and Karnataka. Literally meaning "female servant of god," *devadasis* usually belong to the Dalit community. Once dedicated, the girl is unable to marry, forced to become a prostitute for upper-caste community members, and eventually auctioned into an urban brothel. The age-old practice continues to legitimize the sexual violence and discrimination that have come to characterize the intersection between caste and gender.[129]

While India has adopted measures to abolish the practice and "rehabilitate" *devadasis*, these efforts have been largely unsuccessful. Legislative initiatives are poorly

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come early in the morning so that they may deal with her before their morning bath. If she must come later in the day, they will not accept medicines directly from her hand. Senapti told the survey-takers: "I do my work sincerely. I feel so insulted by this behavior." Ibid., p. 128. *See also* Section VIII(E)(4).

[124] NHRC Report, Section VIII, p. 160.

[125] NCDHR Response to the Special Rapporteur's Questionnaire, p. 15.

[126] NHRC Report, Section VIII, p. 161.

[127] For example, a large number of women engage in the traditional Dalit occupation of manual scavenging. However, development programs that have been targeted at families to eliminate manual scavenging have been utilized by male family members to change occupations, leaving women to continue manual scavenging to enhance household income. NHRC Report, Section VIII, pp. 161-62.

[128] NHRC Report, Section VIII, p. 162. The Government of India has recognized that:

> the incidence of poverty amongst SCs [Scheduled Castes] still continues to be very high with 36.25 percent in rural areas and 38.47 percent in urban areas, when compared to 27.09 and 23.62 percent respectively, in respect of total population in 1999-2000. This is primarily due to the fact that a large number of SCs who are living below the poverty line are landless with no productive assets, no access to sustainable employment and minimum wages. While these figures reflect the picture for the entire SC population, the women belonging to these groups suffer even more because of the added disadvantage of being denied equal and minimum wages.

India's Combined second and third periodic reports to CEDAW, October 19, 2005, CEDAW/C/IND/2-3.

[129] Human Rights Watch, *Broken People*, p. 150.

implemented.[130] The societal perception of *devadasis* as women who are sexually available to men makes it more difficult for *devadasis* to approach the police with complaints of sexual violence.[131] Moreover, the police themselves have been known to exploit *devadasis*.[132]

The Joint Women Programme for the National Commission of Women has found that *devadasi* rehabilitation programs neither address the whole range of problems faced by *devadasis*, nor target the population they were intended to assist.[133] Further, *devadasis* find it difficult to earn a livelihood outside the system because the rehabilitation programs do not provide adequate means of livelihood and skill development, and because financial assistance is often in the form of a loan which must be repaid. Most *devadasis* also lack access to a residential house, health care, or educational facilities for their children.[134]

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[130] For example, the Karnataka state government passed the Karnataka Devadasi (Prohibition of Dedication) Act in 1992, however, not a single case has been booked against priests despite many complaints and admonitions to that effect. NHRC Report, Section V, p. 61.

[131] "When a devadasi is raped, it is not considered rape. She can be had by any man at any time." Human Rights Watch interview with Jyothi Raj, Rural Education and Development Society, Bangalore, July 26, 1998, in Human Rights Watch, *Broken People*, p. 152.

[132] Jyothi Raj added that the law works to the disadvantage of women because it criminalizes their actions and not the actions of their patrons. Police will even go so far as to demand sex as a bribe: "They will threaten to file charges under the act if the woman says no." Ibid.

[133] Only a small number of *devadasis* have been identified for relief and rehabilitation. NHRC Report, Section V, p. 62.

[134] Ibid.

VI. Article 3: Prevent, prohibit and eradicate caste-based segregation

> *Article 3: States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.*

Although there is no *de jure* policy of segregation in India, Dalits are subject to *de facto* segregation in all spheres, including housing, the enjoyment of public services (see Section VIII(F)(1)), and education (see Sections VIII(E)(5)(a) and VIII(F)(1)(c)).[135] This widespread segregation has led to a description of the practice of "untouchability" as India's "hidden apartheid."[136] However, India's periodic report fails to provide any information about segregation, instead confining the information provided under Article 3 to India's support for the anti-apartheid struggle in South Africa and its participation in the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001.[137] Tellingly, India lobbied furiously against the inclusion of any references to caste discrimination, or discrimination on the basis of "work and descent," in the final conference documents.[138]

A. Segregated housing colonies for Dalits

Residential segregation is prevalent across the country, and is the rule rather than the exception.[139] Most Dalits in rural areas live in segregated colonies, away from the upper-

[135] The Special Rapporteur on racism addressed the issue of segregation in his 1999 Annual Report:

> In the rural areas especially, the practice of untouchability is said to be very much alive and is reflected in segregated housing, with the Dalits forced to live at least 1/2 km from the rest of the villagers, and in the prohibition for them to use the wells, the shared water source. Segregation also reportedly exists in the schools, public services and public places (shops, hairdressers and public transport; in restaurants, dishes used by Dalits are sometimes separated from those used by the higher castes).

Mr. Glélé-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, submitted pursuant to Commission on Human Rights resolution 1998/26, January 15, 1999 (55th CHR Session) E/CN.4/1999/15, http://www.unhchr.ch/Huridocda/Huridoca.nsf/0811fcbd0b9f6bd58025667300306dea/8a457423c0bd1f728025673c003460a9?OpenDocument#IIIF (accessed February 7, 2007), para. 99.

[136] Human Rights Watch, *Broken People*, p. 2.

[137] Government of India, Fifteenth, Sixteenth, Seventeenth, Eighteenth, and Nineteenth Periodic Reports to the Committee on the Elimination of Racial Discrimination, CERD/C/IND/19, March 29, 2006, paras. 53-56.

[138] "Anti Racism Summit Ends on Hopeful Note," Human Rights Watch news release, September 10, 2001, http://hrw.org/english/docs/2001/09/10/global3038.htm (accessed February 7, 2007).

[139] NCDHR Response to the Special Rapporteur's Questionnaire, p. 5.

caste residents.[140] This segregation is not limited to rural environments (see Section VIII(E)(3)(b)). Government programs for Dalit housing maintain the existing spatial segregation.[141] Basic residential services such as water are segregated by caste, meaning that Dalits are forbidden from using the water sources and toilet tanks used by non-Dalits.[142] The State provides poorer quality facilities for Dalit colonies and sometimes does not provide any of the facilities that are provided to non-Dalit colonies;[143] for example, medical facilities and the better, thatched-roof houses exist exclusively in upper-caste colonies.[144] An extensive survey of 11 Indian states on the prevalence of "untouchability" in rural India (hereinafter the *Untouchability in Rural India* survey) found that Dalits were denied entry into upper-caste homes in more than 50 percent of villages studied.[145]

B. Segregation in relief camps

Dalits are segregated in disaster relief efforts (see Section V(A)(1)(b)).

C. Segregation in schools

Dalit children and teachers are segregated from their counterparts in schools (see Sections VIII(E)(5)(a) and VIII(F)(1)(c)).

D. Segregation in public life

Dalits are prohibited from using public services and entering private businesses (see Section VIII(F)).

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[140] According to an activist working with Dalit communities in 120 villages in Villapuram district, Tamil Nadu, all 120 villages have segregated Dalit colonies. Human Rights Watch, *Broken People*, p. 26.

[141] NCDHR Response to the Special Rapporteur's Questionnaire, p. 5.

[142] Ibid., pp. 5-6.

[143] Human Rights Watch, *Broken People*, pp. 26-27.

[144] Ibid., p. 26.

[145] Shah, et al., *Untouchability in Rural India*, p. 65 (Table 2.1).

VII. Article 4: Eradicate propaganda inciting caste-based discrimination

> *Article 4: States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention…*

In its periodic report, India indicates that "[n]o cases have arisen under the…legislations for inciting racial disharmony or disseminating ideas of racial superiority."[146] The absence of such cases must be questioned in light of the existence and activities of the *Sangh Parivar*, which serves as the umbrella organization for Hindu nationalist organizations in India, including the Rashtriya Swayamsevak Sangh (National Volunteer Corps, RSS), the Vishwa Hindu Parishad (World Hindu Council, VHP), and the VHP's militant youth wing, the Bajrang Dal. In addition to being responsible for discriminatory attacks against Dalits,[147] these organizations disseminate propaganda targeting both Dalits and religious minorities.[148] While these organizations bear collective responsibility for widespread violence against

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[146] Government of India, Fifteenth, Sixteenth, Seventeenth, Eighteenth, and Nineteenth Periodic Reports to the Committee on the Elimination of Racial Discrimination, CERD/C/IND/19, paras. 58-63.

[147] Illustrative of the discriminatory attacks led by the VHP, on October 16, 2003, in Jhajjar district, Haryana, five Dalit youths were lynched by a mob, reportedly led by members of the VHP in the presence of local police officials, following false rumors that the Dalits had killed a cow—an animal regarded as sacred in the Hindu religion. Nearly a month later five people were arrested, prompting a backlash by villagers who pelted police with stones and blocked off roads for nearly a week. The VHP reportedly also forced shops, businesses, and schools to close in protest of the arrests. A local leader of the VHP was widely quoted in stating that he had no regrets over the incident and that the life of a cow was worth more than that of five Dalits. Human Rights Watch, *World Report 2003*, p. 240, http://www.hrw.org/wr2k3/pdf/india.pdf (accessed February 7, 2007).

[148] The Sangh Parivar and the BJP's Hindutva (Hindu nationalism) ideology has also led these groups to conduct a campaign of hate against Muslim and Christian communities, which has included the spreading of discriminatory propaganda and violent attacks against Muslims and Christians. See, e.g., Human Rights Watch, *We Have No Orders To Save You: State Participation and Complicity in Communal Violence in Gujarat*, Vol. 14, No. 3(C), April 2002, pp. 39-46. Christian institutions and individuals have, for instance, been singled out and targeted for their role in promoting health, literacy, and economic independence among Dalit and tribal community members. A vested interest in keeping these communities in a state of economic dependency is a motivating factor in anti-Christian violence and propaganda. Human Rights Watch, Religious Intolerance and the Rise of Hindu Nationalism, http://hrw.org/campaigns/sasia/india-religion.htm (accessed February 7, 2007). Discriminatory attacks have also been carried out against minority religious communities in the name of fighting religious conversions of Dalits. "Tod-Phod: A Credo that Works," *Times of India*, July 2, 2000.

Muslims and Christians in India,[149] these abuses are outside the scope of this Report. Concerning the dissemination of anti-Dalit propaganda, D.B. Parmar, a Dalit social worker in Gujarat, told Human Rights Watch in 2003 that the VHP had circulated pamphlets demonizing Dalit community members and calling on VHP members to attack Dalits. The VHP has also actively promoted community enmity between Dalits and Muslims.[150] The political wing of the *Sangh Parivar*, the BJP led the Government of India in alliance with other parties between 1998 and 2004;[151] this close relationship is indicative of both a failure to condemn groups that disseminate caste-based propaganda and potentially of the requirement under Article 4(c) of the Convention that State Parties shall not allow public authorities or institutions to promote or incite discrimination.

[149] Human Rights Watch, *We Have No Orders To Save You: State Participation and Complicity in Communal Violence in Gujarat*, Vol. 14, No. 3(C), April 2002.

[150] Human Rights Watch, India, *Compounding Injustice: The government's failure to redress massacres in Gujarat* 2003, p. 58, http://hrw.org/reports/2003/india0703/Gujarat-10.htm (accessed February 7, 2007).

[151] Human Rights Watch, *We Have No Orders To Save You*, p. 39.

VIII. Article 5: Eliminate caste-based discrimination in the enjoyment of Fundamental Rights

> *Article 5: In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law...*

India has failed in its duty to eliminate caste discrimination and ensure the full enjoyment of the fundamental rights and equality before the law of Dalits guaranteed by Article 5. This next section closely details the particular rights violations suffered by Dalits. As a general point, it is important to highlight that the Protection of Civil Rights Act, 1955, and the Prevention of Atrocities Act, 1989 (two of the most important pieces of legislation for the protection of Dalits), have been rendered increasingly ineffective in their ability to protect Dalits from fundamental rights' violations because of the failure of state governments to properly implement the acts.[152] State governments have made no serious efforts to identify areas where the practice of "untouchability" is prevalent, have done very little to make public and known the provisions of the acts, and have failed to periodically survey the acts' effectiveness.[153] Moreover, the NHRC has concluded that there is virtually no monitoring of the acts' implementation at any level.[154] Political leaders have also played a significant role in hindering the implementation of the Prevention of Atrocities Act, 1989.[155]

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[152] NHRC Report, Section IV, pp. 25, 45.

[153] Ibid.

[154] Ibid.

[155] Leaders of Hindu nationalists groups have been engaged in a vilification campaign against the use of the Prevention of Atrocities Act, 1989 since it was first passed. For example, members of both the Bharatiya Janata Party (BJP) and the Shiv Sena have called for the repeal of the act, the former on the ground that it was being used as a political tool, the latter as part of an election strategy in 1995 in Maharashastra. In Mulayam Singh Yadav, the head of the Samajwadi Party and the current Chief Minister of Uttar Pradesh, spoke out against the use of the Act and accused the then-Chief Minister of Uttar Pradesh of casteism in enforcing the act. These actions have a direct effect on the registration of cases—through state governments withdrawing already registered cases, as the Shiv Sena did with over 1,100 cases in Maharashastra in 1995, and an indirect effect by sending a clear message to the police that cases are not to be registered and that the Act is not to be taken seriously. NHRC Report, Section VI, pp. 113-114.

A. Duty to ensure the right to equal treatment of Dalits before organs administering justice

Article 5 (a): Right to equal treatment before organs administering justice

Dalits are frequently the victims of discriminatory treatment in the administration of justice. Prosecutors and judges fail to vigorously and faithfully pursue complaints brought by Dalits, which is evidenced by the high rate of acquittals in such cases. Dalit women suffer particularly as a result of the deficient administration of justice—rape cases are not prosecuted in good faith and Dalit women suffer both caste and gender discrimination in the courtrooms. Moreover, the number of Dalits appointed to judicial office remains low. Instances of "untouchability" and discrimination against Dalit judges by their non-Dalit peers have also been reported.

1. *Police*

The failure of police to register or properly register crimes against Dalits (see Section V(A)(1)(a)(vi)) is a key way in which Dalits' right to equal treatment before organs administering justice is compromised at the outset.

2. *Prosecutors*

a. Poor quality of prosecution under the Protection of Civil Rights Act and the Prevention of Atrocities Act

One of the principal ways in which the right of Dalits to equal treatment before organs administering justice is being denied is through the poor quality of prosecutions under the Protection of Civil Rights Act and Prevention of Atrocities Act, 1989. The Government of India has itself noted this failure in its 2001-2002 Annual Report on the Prevention of Atrocities Act, 1989, which states that in 2002, only 2.31 percent of cases brought under the Prevention of Atrocities Act, 1989 had resulted in convictions.[156] The low rate of convictions,

[156] Annual Report on the Prevention of Atrocities Act for the years 2001-2002, p. 12.

compared against the high number of atrocities reported against Dalits, speaks to the caste bias of prosecutors, as well as other organs of justice, including the judiciary.

b. Failure to prosecute rape cases of Dalit women

Dalit women, occupying the bottom of both the caste and gender hierarchies, are both uniquely susceptible to violence and particularly vulnerable to the infringements of their right to equal treatment before organs administering justice. Cases documented by the National Commission for Women, Human Rights Watch, local and national women's rights organizations, and the press, overwhelmingly demonstrate a systemic pattern of impunity in attacks on Dalit women.[157] Dalit women are more likely to suffer violence and especially sexual violence, and are least likely to get redress in the courts. They are, in a sense, doubly victimized - first at the hands of their attackers, and then at the hands of judicial system that fails to offer them protection and redress.

A Dalit woman who is a survivor of rape will face significant obstacles in bringing her case to the attention of the police, and, in turn, the courts. She will likely face ostracism from her community and family, and she will have difficulty gaining access to the justice system.[158] Further, even if a woman is able to surmount all these obstacles and convince the police to lodge a FIR, she will face new roadblocks at every step of the way. A Dalit woman is likely to be confronted with any of the following impediments to the successful prosecution of her case: unsympathetic doctors[159] and police officers, difficulty in finding witnesses who are willing to risk their own safety by testifying, police officers and prosecutors who are bribed or pressured by the (usually more powerful) attackers, as well as having her case misfiled under more lenient sections of the Indian Penal Code or not being simultaneously filed under the Prevention of Atrocities Act, 1989.[160] The combined effect of these hurdles is such that, even if her case is properly investigated, a Dalit woman will likely find that her attackers have been granted impunity.[161]

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[157] Human Rights Watch, *Broken People*, p. 166.

[158] Ibid., p. 17.

[159] Ibid., p. 170 (citing Rupande Panala, "When a Poor Woman Gets Raped," *Manushi* (New Delhi) September - October 1990, p. 36).

[160] Ibid., p. 172.

[161] Ibid., p. 170.

In fact, as statistics from the National Crime Records Bureau demonstrate, conviction in rape cases is not only extremely rare, but becoming rarer - out of the total rape cases in which trials were completed between 1990-1993, in 1990 41.5 percent ended in conviction; the figure dropped to 34.2 percent in 1991 and to 33.8 percent in 1993.[162] The failings of the prosecutorial arm are further evident in the disproportionately large backlog of rape cases (on average, 80 percent of rape cases remained pending for trial in 1994[163]) and the comparatively low levels of conviction for the crime of rape as compared with less serious crimes of burglary and theft.[164]

Certain states have provided some compensation to Dalit rape victims. As per the 2002-2003 Annual Report on the Prevention of Atrocities Act, 1989, during the year 2002-2003, the state government of Madhya Pradesh incurred an expenditure of Rs. 28.5 lakhs [US$63,808] for providing relief to rape victims[165], while the state of Maharashtra provided financial assistance in the amount of Rs. 19.68 lakhs [US$44,061].[166]

It should be noted that the prosecutorial failure to investigate, file, and pursue cases involving rape against Dalit women has an injurious effect not just on the individual woman harmed in each instance of sexual violence, but more broadly on women and Dalit communities in general - prosecutorial failures empower potential perpetrators by signaling that crimes against Dalit women will be rewarded with impunity and also further disempowers marginalized communities by eroding their trust in the judiciary. Finally, prosecutorial failures in the context of cases involving rape against Dalit women encourage the use of rape as a tool to punish and silence Dalit communities.[167]

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[162] Ibid., pp. 170-171 (citing National Crime Records Bureau (Ministry of Home Affairs), *Crime in India 1994*, as quoted in Sakshi, "Gender and Judges: A Judicial Point of View" (New Delhi, 1996), p. 9).

[163] Ibid., p. 171 (citing National Crime Records Bureau (Ministry of Home Affairs), *Crime in India 1994*, as quoted in Sakshi, "Gender and Judges: A Judicial Point of View" (New Delhi, 1996), p. 9).

[164] Ibid.

[165] Annual Report on the Atrocities Act for the year 2002-2003, p. 37.

[166] Ibid., p. 43.

[167] Human Rights Watch, *Broken People*, p. 175.

3. Courts

a. Caste and Gender Discrimination by Judges

The prevalence of caste and gender bias among India's judges is another factor which imperils the right of Dalits to equal treatment before organs administering justice under Article 5 of ICERD. Such bias has resulted in improperly conducted trials, including acquittals that blatantly ignore evidence and witness testimony and entrench the system of impunity that greets perpetrators of violence against Dalits.

Box 2: The Bhanwari Devi Case

The case of Bhanwari Devi illustrates the role of caste and gender bias in India's justice system. A grassroots worker or *sathin* with the Rajasthan Government's Women's Development Programme (WDP), Bhanwari reported the child marriage of a 1-year-old girl. On September 22, 1992, in retaliation, members of the child's family gang raped Bhanwari in front of her husband. These individuals were acquitted, with the judge stating that since "rape is usually committed by teenagers, and since the accused are middle-aged and therefore respectable, they could not have committed the crime. An upper-caste man could not have defiled himself by raping a lower-caste woman."[168] The individuals also received significant political support from the local BJP.[169] In early 1996 an appeal of the acquittal was filed in the High Court, but as of November 2006, 14 years after the rape, the verdict remains.[170] A survey conducted by Delhi-based NGO Sakshi found that 64 percent of judges believe that "women themselves are partly responsible for the violence they face."[171] Gender discrimination is also evident at the Supreme Court level.[172]b. Lack of Dalit Judges

[168] Ibid., p. 176 (citing "In Brief: Recent Rape Cases," in *Kali's Yug* (New Delhi), November, 1996, p. 20).

[169] Ibid., p. 176 (citing K. S. Tomar, "Atrocities Against Rajasthan women on the rise: Report," *The Hindustan Times*, May 28, 1998).

[170] Kavita Srivastaya, a women's rights activist who has been at the forefront of the campaign to get justice for Bhanwari Devi recently underscored the effects of judicial discrimination in this case: "It's the 10th year of that appeal and not a single hearing has taken place yet. We twice appealed for an early hearing but both were rejected." Saira Kurup, "Four Women India Forgot," *Times of India*, November 20, 2006.

[171] Cited in R.D. Sharma, "Crime against Women," *The Hindu*, May 15, 2001, http://www.sarid.net/religious-dimension/gender-and-religion/04-30-crime-agaist-women.htm (accessed February 7, 2007).

[172] A 1996 case involving the rape of a three-year-old girl by her father provides a telling example of both the tendency to blame women for the actions of men and the freedom with which judges express overtly discriminatory sentiment in their opinions. In *Shri Satish Mehra v. Delhi Administration and Another*, the Supreme Court found that there was insufficient evidence to proceed to trial, remarking

Dalits' right to equal treatment before the courts is further imperiled on account of the fact that Dalits themselves are poorly represented in the judiciary. Statistics presented in the Fourth Report of the National Commission for Scheduled Castes and Schedules Tribes for the years 1996-97 reveal the magnitude of the problem. For example, while Dalits comprise roughly 16 percent of the population, in 1982, only four out of the 325 judges in all High Courts in India were Dalits (i.e. 1.23 percent of the judiciary). By 1993 the situation was only marginally better, with 13 out of 547 judges at the all India level being Dalits (i.e. 2.38 percent).[173] In 2002 the Supreme Court had one Dalit out of 26 judges, while the High Courts had 25 Dalits out of 625 positions.[174] Also illustrative of the lack of Dalit and lower-caste representation in the judiciary is the fact that Brahmins, who comprise just 5 to 9 percent of India's 1 billion people, fill 78 percent of India's judicial posts.[175]

Caste and gender discrimination do not cease once a Dalit is appointed to a judicial position, as discriminatory attitudes prevail among judges themselves. The depth of anti-Dalit sentiment in the judiciary is particularly well illustrated by an incident that took place in July 1998 in the state of Uttar Pradesh, where, as the *Times of India* reports, an Allahabad High Court Judge had his chamber "purified with Ganga *jal*" (water from the River Ganges) because it had earlier been occupied by a Dalit judge.[176]

c. Large number of cases involving offenses and atrocities against Dalits still pending before the courts

The failures of implementing Article 5 of ICERD with respect to caste are further evinced by the disproportionately large numbers of pending cases involving offenses and atrocities against Dalits. The Sixth and Seventh Reports of the National Commission for Scheduled

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on the "seemingly incredulous nature of the accusations against a father that molested his infant child", and accusing the mother of leveling false accusations as revenge for an unhappy marriage. The Supreme Court further ignored the probative value of the mother's testimony about the fact that the father was an alcoholic and prone to inflicting severe physical violence on her, finding instead that the testimony was proof of the mother's "vengeful" attitude. Human Rights Watch, *Broken People*, p. 177, citing the Supreme Court of India, Criminal Appellate Jurisdiction, Criminal Appeal No. 1385 of 1995, p. 6.

[173] NCDHR Response to the Special Rapporteur's Questionnaire, p. 27 (citing statistics from The National Commission on Scheduled Castes and Scheduled Tribes - Fourth Report (2001-2002), p. 129).

[174] "President's No on Chhattisgarh Judges," *Indian Express*, February 3, 2002.

[175] Gospel for Asia, "Facts about Dalits," undated, http://www.gfa.org/gfa/dalit-facts (accessed February 7, 2007).

[176] Human Rights Watch, *Broken People*, p. 24 (citing "LS Concerned at "purifying" act by HC judge," *Times of India* (Bombay), July 23, 1998). The resignation of Sushila Naggar, the first female Dalit judicial officer in Rajasthan is also illustrative of the pervasiveness of caste and gender discrimination among the judiciary. Sushila Naggar reported sexual harassment from a colleague shortly after starting at her job, and was finally forced to resign from the services in 2001, after her seniors continued the harassment by leveling baseless charges against her. "Woman Judicial Officer Quits," *The Statesman* (India), May 1, 2001.

Castes and Scheduled Tribes reveal, respectively, that less than a sixth of such cases that reached trial stage in 1999-2000 were actually adjudicated, and that only 11 percent of the cases were disposed of during 2001-2002.[177] The large number of cases concerning Dalits that are still pending before the courts suggests non-compliance with the Convention; the Committee has made plain that "guarantee[ing] the victim a court judgment within a reasonable period" is something that "States parties should ensure [in their] system of justice."[178]

d. High rate of acquittals

The failures of implementing Article 5 of ICERD with respect to caste are also evinced by the disproportionately high rate of acquittals in cases involving offences and atrocities against Dalits. The Third and Sixth Reports of the National Commission for Scheduled Castes and Scheduled Tribes reveal, respectively, that in 1996, the conviction rate in these cases was 15 percent,[179] while the acquittal rate was 85 percent, and that in 1999-2000 and 2000-2001, as much as 89 percent of cases resulted in acquittals.[180] The Commission additionally found that only 11 percent of cases were disposed of during the year. Of those, 51 percent resulted in convictions. The small percentage of cases that actually reached the trial stage is a cause for concern.[181] Additionally, the acquittal rates were still alarming in the states of Assam, Gujarat, Kerala, Maharashtra, Orissa, Rajasthan, Uttaranchal, Karnataka, and Haryana, where acquittal rates were as high as 97 percent.[182] According to the Government's 2001-2002 Annual Report on the Prevention of Atrocities Act, 1989 only 2.3 percent of overall cases brought under the Prevention of Atrocities Act, 1989 resulted in convictions in 2002.[183] Recent statistics released by the Home Ministry in December 2006 reveal that the pattern of acquittals continues: of the 833 cases registered under the Act in the state of Maharashtra in 2005, only 6.3 percent ended in conviction. In 2004 689 cases were

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[177] NCDHR Response to the Special Rapporteur's Questionnaire, p. 25 (citing statistics from The National Commission on Scheduled Castes and Scheduled Tribes - Sixth Report (1999-2000 & 2000-2001) and Seventh Report (2001-2002), p. 128).

[178] CERD General Comment XXXI - *Prevention of racial discrimination in the administration and functioning of the criminal justice system*, para. 19.

[179] NCDHR Response to the Special Rapporteur's Questionnaire, p. 26 (citing the National Commission on Scheduled Castes and Scheduled Tribes – Third Report (1996), pp. 211-13).

[180] Ibid., p. 26 (citing Dalits and the Law by Girish Agrawal and Colin Gonsalves, Human Rights Law Network, 2005, New Delhi, p. 13).

[181] Ibid., p. 26 (citing the National Commission on Scheduled Castes and Scheduled Tribes - Seventh Report (2001-2002), p. 128).

[182] Ibid.

[183] Annual Report on the Prevention of Atrocities Act for the years 2001-2002, p. 12.

registered in the state, with only 4.8 percent ending in convictions. In Gujarat, in the 1,301 cases registered in 2005, the conviction rate was a poor 3.8 percent. The state of Uttar Pradesh fared better: of the 4,369 cases registered last year, nearly half the offenders were convicted.[184]

B. Ensure Dalits' right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution

Article 5 (b): The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.

India's obligation to ensure a person's right to security and to protect against violence or bodily harm applies to State and non-State actors. The nature and extent of abuse against Dalits by the police has been set out above in Section V(A)(1)(a). This section focuses on widespread violence against Dalits, including sexual violence against Dalit women, and the failure of Indian government to protect Dalits and ensure their security of person.

1. Widespread violence against Dalits

For Dalits, the right to personal security has been seriously undermined because of rampant attacks and violence committed against them.[185] Media, NGO, and government reports reveal that the police have systematically failed to protect Dalit homes and Dalit individuals from acts of looting, arson, sexual assault, torture, and other inhumane acts such as stripping and parading Dalit women and forcing Dalits to drink urine and eat feces.[186] For

[184] "Dalits safer in UP, says Govt Report," *CNN-IBN Live*, Posted December 12, 2006, http://www.ibnlive.com/news/up-handles-atrocities-on-dalits-better/28242-3.html (accessed February 7, 2007).

[185] According to the National Human Rights Commission, "reports in the press about atrocities against persons belonging to these groups and the frequency with which they occur is a cause for disquiet." NHRC Report, p. vii.

[186] Arya, Alka, "Rights-India: Prosperity for Lower Caste Sharpens Animosity," *IPS-Inter Press Service*, 19 September 2005 [p. 1]; "Caste Hindus, Dalits clash in Hassan District," *The Hindu*, October 13, 2005, p. 8; "Inquiry ordered into molestation before cop," *The Statesman*, December 20, 2004, p. 18; Sainath, G., "Sarpanch paraded half-naked for confining ex-employee," *The Hindu*, July 7, 2004, p. 43; "Contractor tortures Dalit youths in medieval age re-run," *The Statesman*, June 26, 2003, p. 10; "Dalit academic...," Vishwanathan, S., "A Tale of Torture," *Frontline*, August 2-15, 2003, p. 61; Vishwanathan, S., "Members of the *denotified tribes* continue to bear the brunt of police brutality," *Frontline*, June 8-21, 2002, p. 63.

example, the government's Annual Report on the Prevention of Atrocities Act, 1989 found that 30,022 cases were registered against Scheduled Castes and Scheduled Tribes under the Act in 2001 and 27,894 were registered in 2002.[187] As staggering as these statistics are, they represent only a fraction of the violence committed against Dalits. A number of factors, including lack of police cooperation, fear of reprisals, and difficulty in gaining access to the judiciary contribute to a reluctance or inability on the part of Dalits to report crimes against them.[188] Systematic non-registration or improper registration of atrocities also accounts for under-reporting (see Section V(A)(1)(a)(vi)). Much like cases of police abuse against Dalits, attacks by private actors often take the form of collective punishment, whereby entire communities or villages are punished for the perceived transgressions of individuals who seek to alter village customs or demand their rights.[189] Retaliatory attacks for such challenges are rife (see Box 4).

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[187] Annual Report on the Prevention of Atrocities Act for the years 2001-2002, pp. 9-10.

[188] Human Rights Watch, *Broken People*, p. 41.

[189] Ibid., p. 29.

Box 3: Offenses under the Prevention of Atrocities Act, 1989

This violence or bodily harm against Dalits takes many forms. The offenses made punishable by the Prevention of Atrocities Act, 1989 provide a glimpse into the types of retaliatory or customarily degrading treatment Dalits receive. The offenses include:

- Forcing members of a scheduled caste or scheduled tribe to drink or eat any inedible or obnoxious substance;
- Dumping excreta, waste matter, carcasses or any other obnoxious substance in their premises or neighborhood;
- Forcibly removing their clothes and parading them naked or with painted face or body;
- Interfering with their rights to land;
- Compelling a member of a scheduled caste or scheduled tribe into forms of forced or bonded labor;
- Corrupting or fouling the water of any spring, reservoir or any other source ordinarily used by scheduled castes or scheduled tribes;
- Denying right of passage to a place of public resort;
- Using a position of dominance to exploit a scheduled caste or scheduled tribe woman sexually.[190]

Despite these offenses being criminalized under the Prevention of Atrocities Act, 1989 the systematic non-implementation of these provisions by the police (see Sections V(A)(1)(a) and V(A)(1)(a)(vi)) results in a continued pattern of violence, as is borne out in media reports. For example, a survey of Indian media during a six-month period in 2006 illustrates the extent and brutality of violent crimes against Dalits:

- "Dalit leader abused for daring to sit on a chair"[191]
- "Dalit worker beaten on suspicion of theft"[192]
- "Dalit lynched while gathering grain"[193]

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[190] Prevention Of Atrocities Act, 1989, Section 3.

[191] "Dalit leader abused for daring to sit on a chair," *Indo-Asian News Service*, July 10, 2006.

[192] "Dalit worker beaten on suspicion of theft," *Indo-Asian News Service*, June 23, 2006, Friday.

- "Dalit beaten for entering temple"[194]
- "UP Dalit girl resists rape, loses arm as a result"[195]
- "Dalit tries to fetch water beaten to death"[196]

The need for India to address violence and bodily harm by private actors has also been documented by the UN special procedures. On June 8, 2004, the Special Rapporteur on racism, jointly with the Special Rapporteur on violence against women, sent a letter of allegation to India concerning a group of 200 people who attacked a Dalit settlement in Kalapatti village, Coimbatore district, Tamil Nadu, on May 16, 2004.[197] According to the Special Rapporteur on racism's 2005 Annual Report:

> The Dalits' homes were reported to have been attacked by upper-caste villagers using swords and other weapons. Allegedly, inter alia, they pushed the Dalits to the ground, stomped on them, used degrading caste names to refer to them, sexually assaulted the women and attempted to pull off their saris. Other specific incidents mentioned were that an 8-month-old baby was thrown against a wall, a 75-year-old man was attacked, and a middle-aged woman was hit on the head as she attempted to protect her son. Close to 100 houses were said to have been burnt, money and jewels were stolen, and cattle owned by the Dalits were reported to have been killed. In total, 14 Dalits were allegedly admitted to the Coimbatore Medical College Hospital. Many Dalits are said to have tried to escape but were prevented from leaving the settlement. Fears have been expressed for their security.[198]

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193 "Dalit Lynched While Gathering Grain," *Indian Express*, April 25, 2006.

194 "Dalit beaten for entering temple," *Indo-Asian News Service*, February 22, 2006.

195 "UP Dalit girl resists rape, loses arm as a result," *Hindustan Times*, February 13, 2006.

196 "Dalit tries to fetch water, beaten to death," *Indo-Asian News Service*, February 4, 2006.

197 Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Annual Reports to the Commission on Human Rights, 2005 (61st session) CHR, E/CN.4/2005/18/Add.1, Summary of cases transmitted to Governments and replies received, para. 17.

198 Report by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène, Addendum, Summary of cases transmitted to Governments and replies received, February 23, 2005 (61st Session) E/CN.4/2005/18/Add.1, para. 17. No reply to his communication had been received from the Government of India at the time this report was finalized. The Special Rapporteur stated that he intended to follow up on this case, and if no response was received from the Government, he would no longer treat the case as a mere allegation but would include it in his next general report.

Box 4: Examples of retaliatory attacks against Dalits

When a Dalit man from the Dholapur district of Rajasthan, refused to sell *bidis* (hand-rolled cigarettes) on credit to the nephew of an upper-caste village chief, the upper-caste family retaliated by forcibly piercing his nostril, drawing a string through his nose, parading him around the village, and tying him to a cattle post.[199]

When Dalit agrarian labor activist Bant Singh, whose daughter was gang-raped in 2002, defied landlords' threats and local upper-caste leaders in seeking prosecution against those who gang-raped his daughter, the landlords retaliated by violently attacking him, beating him so badly that both his arms and one of his legs had to be amputated; the remaining leg was permanently disabled.[200]

When Dalits from Amachiyarpatti village in Tamil Nadu resisted Thevars'[201] demand that they use coconut shells at tea stalls to prevent them from drinking out of the tea tumblers used by caste Hindus, Thevars retaliated by torching and burning Dalit houses in their village.[202]

When Dalits from the Dalit colony of Veludavur village in Villapuram district, Tamil Nadu, demanded their right to participate in a government auction of common properties in Veludavur, members of seven neighboring caste Hindu villages attacked their colony, destroying 400 huts, attacking women, children, and the elderly, and displacing 700 Dalit families.[203]

When a 16-year-old Dalit rape survivor from Sahalwada village in Madhya Pradesh, refused to withdraw the complaint she had filed against her attacker, he retaliated by pouring kerosene on her and setting her on fire.[204]

When a Dalit argued with an upper-caste farmer in Kothapally village in Andhra Pradesh, the upper-caste villagers attacked 80 Dalit families in retaliation. When the same Dalit man then went to the police to report the incident, a social boycott was imposed on all of the Dalits from Kothapally; they were thrown out of their village and denied every opportunity to earn their livelihood.[205]

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[199] Human Rights Watch, *Broken People*, p. 24.

[200] "Bant Singh can still sing!" Forum for Democratic Initiatives. The attack on Bant Singh took place in January 2006.

[201] Thevars are a marginally higher-caste non-Dalit community.

[202] Human Rights Watch, *Broken People*, p. 85 (citing "Clashes in TN result of caste disparities: Report," *The Statesman* (Delhi), July 2, 1997).

[203] Ibid., p. 112.

[204] "Dalit girl burnt to death by man accused of rape," November 24, 2006, http://www.dalitnetwork.org/go?/dfn/news/2006/11/ (accessed February 7, 2007).

[205] Tejeshwi Pratima, "Dalits Thrown Out of Their Village For Raising Their Voice Against Discrimination," June 29, 2006, http://www.ndtv.com/template/template.asp?category=National&template=dalitatrocities&slug=Dalits+boycotted+for+raising+voice&id=89587&callid=1 (accessed February 7, 2007). The incident took place in June 2006.

2. *Violence against Dalit women*

The nature and extent of police abuse of Dalit women has been dealt with above in Section V(A)(1)(a)(iv). Dalit women are also especially vulnerable to violence by private actors who commit violent offenses with impunity. As the majority of landless laborers, Dalit women come into greater contact with landlords and enforcement agencies than upper-caste women, rendering them more susceptible to abuse.[206] Landlords use sexual abuse and other forms of violence and humiliation against Dalit women as tools to inflict "lessons" and crush dissent and labor movements within Dalit communities.[207] For example, upper-caste groups will engage in mass rapes of Dalit women or in retaliation against Dalits who strive for political empowerment or violate customary injunctions.[208] In their attacks on Dalit communities, Ranvir Sena members committed acts of sexual violence against Dalit women. Human Rights Watch has documented a massacre of Dalits committed in Laxmanpur-Bathe, Bihar (see Section V(A)(1)(a)(i)), in which women were raped and mutilated before being killed.[209] According to the Tamil Nadu Women's Forum, Dalit women are butchered, raped, and killed during caste riots.[210]

Dalit women also comprise the majority of victims of gang rapes in India.[211] Human Rights Watch reported that on April 5, 2003, for example, four upper-caste men abducted a 14-year-old Dalit girl from her home just outside Jaipur, Rajasthan, and gang-raped her over a period of three days. Upon her return to her village, the village's upper-caste community threatened to remove her family if they reported the incident.[212] Dalit women are also singled out for other indignities, like being paraded naked, even for petty disputes.[213] These indignities have symbolic significance. For example, Human Rights Watch reported that on November 3, 2003, a Dalit woman in Kishanganj, Bihar, was paraded half-naked by a group of people who wanted to teach a lesson to her family for not relinquishing their claim to a piece of land.[214]

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[206] Human Rights Watch, *Broken People*, p. 166.
[207] Ibid.
[208] NHRC Report, Section VIII, p. 161.
[209] Human Rights Watch, *Broken People*, p. 166.
[210] Ibid., p. 113 (Citing Human Rights Watch interview with Burnad Fatima, Tamil Nadu Women's Forum, Madras, February 14, 1998).
[211] Ibid., p. 167.
[212] Human Rights Watch, *World Report 2003*, p. 240.
[213] NHRC Report, Section VIII, p. 161.
[214] Human Rights Watch, *World Report 2003*, p. 240.

Vulnerability to sexual violence also results from Dalit women's lower economic and social status, leading many Dalit women to turn to prostitution for their survival.[215] Other forms of abuse result from superstitious beliefs, according to which Dalit women may be branded as witches and blamed for certain mishaps in the community. Aside from the humiliation of being branded as a "witch," Dalit women are also punished for these mishaps, for example by being made to eat feces and drink urine, by having their teeth pulled out, by having chili pepper put in their eyes, and by being beaten severely enough to result in death.[216]

Both the root causes of this abuse and the resulting social, physical, and mental trauma Dalit women suffer[217] highlights the particular vulnerability of Dalit women which merits special protection by the State. However, rather than ensuring Dalit women's development and protection, India has failed to punish perpetrators and in some instances, has even directly participated in abusive acts.[218] Cases documented by India's National Commission for Women, by local and national non-governmental women's rights organizations, and by the press, reveal a pattern of impunity for attacks on Dalit women.[219] However, due to uninterest, ignorance of proper procedure, or their own caste biases, the police have failed to register or properly investigate many cases of attacks against women.[220] In all cases of attacks on women documented by Human Rights Watch, the accused state and private actors escaped punishment; in most cases, attacks were neither investigated nor prosecuted.[221]

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[215] NHRC Report, Section VIII, p. 161.
The National Human Rights Commission has reported that Dalit women are forced to turn to prostitution in times of extreme hardship, such as natural calamities, in order for the family to survive. Moreover, in certain communities, prostitution is an integral part of social survival for Dalit women.

[216] NCDHR Response to the Special Rapporteur's Questionnaire, p. 15.

[217] Ibid.

[218] Ibid.

[219] Human Rights Watch, *Broken People*, p. 166.

[220] Ibid., p. 115.

[221] Ibid., p. 166.

Box 5: Impunity and obstacles to prosecution of rape and killing of Dalit women

While women in India generally face obstacles in prosecuting rape, if a woman is poor, belongs to a lower-caste, and lives in a rural area, it is even more difficult for her to gain access to the justice system.[222] Those who are able to pursue cases of sexual assault face entrenched biases at every stage of the process.[223] These obstacles exist whether the acts are carried out by mobs or by individuals.

For example, in October 2006, a mob of 60 upper-caste villagers stormed the Bhotmanges home as they were preparing dinner in Kherlanji village in Bhandara district. Fourty-four-year-old Surekha, her daughter Priyanka, and sons Roshan and Sudhir were dragged from their home, stripped naked, beaten and taken to the village square. At the village square, both women were raped for over an hour, after which all four family members were hacked to death. More than a month later, the police have yet to take action against the primary perpetrators of these crimes.[224]

Another case illustrative of the obstacles to justice was presented at the National Public Hearing held in 2000 by the NCDHR. In this particular case, Ms. Gangawati testified that after being raped at gunpoint in her own home, her unsuccessful attempts to get the local police to register her case required her to petition the Chief Minister of Uttar Pradesh and the NHRC. While the latter directed the district police to conduct an enquiry, the local police officer avoided filing her case for months, and even after her case was finally registered, no action was taken against her attacker.[225]

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[222] Ibid., p. 170.

[223] Ibid., p. 170.

[224] Yogesh Pawar, "Dalit killing: No action taken against accused," *NDTV*, November 4, 2006, http://www.ndtv.com/template/template.asp?category=National&template=dalitatrocities&slug=Dalit+killing%3A+No+action+against+accused&id=95838&callid=1 (accessed February 7, 2007).

[225] Police Protect Rapist of Dalit Woman, National Public Hearing, April 18-19, 2000, Chennai-Tamil Nadu, Case Papers: Summary Jury's Interim Observations & Recommendations, Vol. 1, p. 184.

C. Ensure Dalits' political rights

Article 5 (c): Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

While Dalits now exercise their franchise in greater numbers than upper-caste community members,[226] their right to vote freely and to stand for election is still not fully guaranteed. These rights have repeatedly been impeded by booth-rigging and booth capturing, denial of access to polls, intimidation, and violence.

1. Booth-capturing and denial of entry to polling booths

Dalits' right of political participation is denied through the decades-old practice of "booth-capturing," whereby ballot boxes are stolen by hired hands.[227] For example, in the 1998 national parliamentary elections in Bihar, the Election Commission had to order re-polling in over 700 voting stations after more than 1,100 people were arrested for booth-capturing and tearing up of ballot boxes.[228] The *Untouchability in Rural India* survey found that in some 12.3 percent of villages, Dalits are still denied entry to polling booths.[229]

2. Intimidation and violence in voting, standing for election, and conduct of public affairs

The 1998 Bihar elections also demonstrate the role of violence and intimidation in elections: in the first phase of elections 15 people were killed and dozens more were injured going to the polls;[230] seven more deaths and further intimidation was reported during the second

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[226] Shah, et al., *Untouchability in Rural India*, p. 155. "Dalits increasingly exercise their franchise. They participate more vigorously and in larger numbers compared to caste Hindus in the state assembly and parliamentary elections."

[227] Human Rights Watch, *Broken People*, p. 56, fn. 121 (citing Arthur Max, "Private Armies," Associated Press, April 22, 1996).

[228] Ibid., pp. 55-56, fn. 120 (citing "Repoll in 700 booths in Bihar ordered," *Indian Express*, February 19, 1998).

[229] Shah, et al., *Untouchability in Rural India*, p. 71.

[230] Human Rights Watch, *Broken People*, pp. 55-56, fn. 120 (citing "EC cracks whip, scraps Patna polls," *INDOlink New from India*, February 21, 1998.

phase.[231] The violence in Bihar serves as but one example of a widespread practice: according to a 1996 Associated Press report, armies formed by local politicians have intimidated villages during every election in the underdeveloped farmland of northern India.[232] The Indo-Asian News Service (IANS) reported that on August 6, 2006, seven Dalit women from a village in Bihar were allegedly raped at gunpoint by upper-caste landowners for refusing to vote for an upper-caste landowner's wife in the local elections.[233]

Violence and intimidation are also used to prevent Dalits from standing for election. In October 2005 a Dalit woman, Prabhati Devi, was burned alive for contesting a *panchayat* (village council) election against an upper-caste candidate in Mirzapur district in Uttar Pradesh in defiance of a local politician's warning not to contest.[234] In June 1997 the Dalit leaders of the Melavalavu *panchayat* in Tamil Nadu—who were elected to seats constitutionally reserved for Dalits[235]—were murdered by members of the higher-caste Thevar community, signaling that the ceding of power would not be tolerated by those displaced from their positions on the council.[236] Thevars also threatened Dalits with "economic sanctions" should any of them file for the position of *panchayat* president, a sanction that would effectively leave Dalits without employment or access to economic or social services in villages in that area.[237]

Those Dalits who are in positions of public office are often unable to properly discharge their public functions. For example, in November 2006 the Asian Human Rights Commission reported that Prem Narayan, a Dalit village head of Vajidpur village in Uttar Pradesh, had

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[231] Ibid., pp. 55-56, fn. 120 (citing "Second phase: 55% voting, nine deaths," *Indian Express*, February 23, 1998).

[232] Ibid., p. 56, fn. 121 (citing Arthur Max, "Private Armies," Associated Press, April 22, 1996).

[233] When men from the women's community rushed to save them, they were humiliated, beaten and threatened with being killed. Police reportedly refused to register their complaint and downgraded the charges from rape to assault. "Seven Bihar women victims of rape seek justice," *Indo-Asian News Service*, August 22, 2006.

[234] "Dalit woman burnt alive for contesting panchayat elections," *Hindustan Times*, October 23, 2005.

[235] In September 1996 the village of Melavalavu was declared a reserved constituency under Article 243D of the Indian constitution. This meant that there would be seats reserved for Dalits on the Melavalavu *panchayat* (village council), which covers eight villages and 1,000 Dalit families.

[236] Human Rights Watch, *Broken People*, p. 90. As observed by Dr. George Mathew of the New Delhi Institute of Social Sciences, who visited the area soon after the murders: "[T]he violence was basically a result of a shift in the power equations from the haves and the have nots." Ibid. (citing "Melavalavu violence due to shift in power equations," *The Hindu*, August 16, 1997).

[237] Ibid., p. 91 (citing "6 Dalits hacked," *Times of India.* As reported in the *Times of India*, "they were warned that they would lose their jobs as farmhands and not be allowed to graze cattle or draw water from wells located on 'patta' [unutilized] land held by the dominant castes.").

been facing discrimination, intimidation, threats, and physical violence in his attempts to discharge his duties as a village head.[238]

3. Denial of entry to public offices

According to the *Untouchability in Rural India* survey Dalits are also denied entry to *panchayat* offices in some 14.4 percent of the 499 villages surveyed, which has the effect of denying them access and a right to be heard at the most immediate level of government.[239]

D. Ensure Dalits' other civil rights

1. Ensure Dalits' right to freedom of movement and residence within the border of the State

> *Article 5 (d) (i): The right to freedom of movement and residence within the border of the State.*

Dalits' right to freedom of movement and residence within India is curtailed by residential segregation, by conditions which make Dalits vulnerable to migratory labor, and by the forced displacement of Dalits in the aftermath of episodes of caste violence.

a. Forced Migration of Dalits

For Dalits, among the poorest and least powerful of India's inhabitants, the choice of where to live is rarely a choice in any meaningful sense. Because Dalits are rarely able to own land (see Section VIII(D)(4)) they are unable to produce their crops for their own consumption or sale in the market.[240] Given the limited amount of jobs and resources in India, and other

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[238] "Dalit village head faces constant intimidation due to caste discrimination in Uttar Pradesh," Asian Human Rights Commission, Urgent Appeal, November 22, 2006.
[239] Shah, et al., *Untouchability in Rural India*, p. 70. (Table 2.2).
[240] NCDHR Response to the Special Rapporteur's Questionnaire, p. 10.

economic hardships such as droughts, Dalits are often forced to migrate in search of work.[241]

b. Forced displacement of Dalits

The right of Dalits to enjoy freedom of movement and residence is further eroded by large-scale forced displacements of Dalit communities following episodes of caste-based violence. In a typical scenario, Dalit villages are attacked by neighboring upper-caste villagers. Dalits are assaulted during the attack, while their homes and property are looted or destroyed.[242] Dalits then settle in and languish for months in temporary and inadequate homes on government property.[243] The police offer little in terms of security in these cases, either ignoring Dalit calls for help, or actively participating in the violence and looting.[244] Redress is not to be found from the local government either—aside from distributing nominal amounts in compensation or promising construction of new homes, little is done to help the displaced Dalits return home or to prosecute those responsible for the attacks.[245]

[241] Ibid.
[242] Human Rights Watch, *Broken People*, p. 99.
[243] Ibid.
[244] Ibid. *see also* infra Section V(A)(1)(a)(v).
[245] Ibid.

Box 6: Instances of Forced Displacement of Dalit Villagers

The 1997 displacement of Dalit villagers from Mangapuram, Virudhunagar district, Tamil Nadu, illustrates the general pattern of Dalit displacement following caste-based violence. Prior to 1997 Mangapuram was home to 3,000 higher-caste Thevar and 250 Pallar (Dalit) families. On March 7, 1996, Thevars attacked Pallars, 150 Pallar houses were set on fire, and a Pallar man was burned alive. Pallars later destroyed several Thevar houses. In retaliation, Thevars threw petrol bombs into the Pallar residential area. On June 10, 1997, the deputy superintendent, a Thevar, attempted to force Pallars out of the village, colluding with hundreds of Thevar villagers who attacked the Pallars and set their houses on fire. The displaced Pallars took refuge in nearby villages, with 300 individuals housed in 250 poorly constructed huts, and another 200 housed in 70 huts. No action was taken against the Thevar police officials or villagers responsible for the attacks and the ensuing displacement.[246]

In 2003 a mass displacement of all 275 Dalit families from Harsola village in Haryana's Kaithal district followed an attack on the village by upper-caste men.[247] Congress leaders who brought the case to the attention of the NHRC cited the "irresponsible" statements of local officials, such as those indicating that Dalits "were enjoying the situation and were not interested in returning to their homes."[248]

A fact-finding report by People's Watch-Tamil Nadu and Dalit Human Rights Monitoring revealed that in 2004 the Dalits of Kalapatti village in Tamil Nadu were forced to flee after an attack by upper-caste Hindus in which over 100 Dalit homes were burned and other property was destroyed.[249]

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[246] Ibid., pp. 99-100.

[247] "NHRC to Probe Kaithal Dalits Issue", *Indian Express*, June 5, 2003.

[248] Ibid

[249] People's Watch and Dalit Human Rights Monitoring fact-finding team report (2004), http://www.ahrchk.net/ua/pdf/kalapatti-fact-findings.pdf (accessed February 7, 2007).

2. Ensure Dalits' right to leave any country, including one's own, and to return to one's country

> *Article 5 (d) (ii): The right to leave any country, including one's own, and to return to one's country.*

Dalits' right to leave India, while formally granted, is not substantively guaranteed, due to Dalits' difficulty in acquiring relevant documents (such as birth certificates) and other proof necessary to get a passport.[250]

Dalits can suffer reprisal attacks against the families of those who are able to travel for employment abroad and send remittances back home. Caste-based prejudice has led to attacks against Dalits who become economically better off because of such remittances. Many Dalits in the village of Kodiyangulam, Tamil Nadu, for example, have been sending family members to work in Gulf states in an attempt to rise above their economic oppression at home. But according to the London paper *The Guardian*, on August 31, 2005, the Dalit villagers were assaulted by hundreds of rampaging policemen, who poisoned their well and destroyed the possessions accumulated over a lifetime of hard work.[251] In a similar episode in Tamil Nadu in 1999, Dalits returning with money from jobs in the Gulf states and elsewhere found themselves attacked by landlords and police when they tried to buy land for their families.[252]

3. Ensure Dalits' right to marriage and choice of spouse

> *Article 5 (d) (iv): The right to marriage and choice of spouse.*

Rigid social norms of purity and pollution are socially enforced through strict prohibitions on marriage or other social interaction between castes, in violation of Dalits' right to marry and choose their spouse. These prohibitions on inter-marriage are a hallmark feature of the

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[250] Dalits in Pondicherry, for instance, were unable to gain employment through the reservations policies aimed at their rehabilitation because they were not able to produce birth certificates relating to the pre-1964 period. "Bhim Sena Seeks Rehabilitation of Displaced Dalit Workers," *The Hindu*, June 26, 2003.

[251] "Raid Hits 'Uppity Untouchables,'" Suzanne Goldenberg, *The Guardian* (London), October 19, 1995.

[252] "Brutality used to keep India's underclass down," Suzanne Goldenberg, *The Guardian* (London), April 13, 1999.

caste system. Inter-marriages between Dalits and non-Dalits are frequently the flashpoint for conflicts and violence.

a. Prohibitions on marriage between Dalits and non-Dalits

The *Untouchability in Rural India* survey concluded that "the most severely sanctioned public activity is a Dalit marriage procession passing through the village street."[253] Wedding processions in northern India are symbols of joy, prosperity, and power, and often include large parties of family and friends accompanied by musical bands and dancing.[254] Dalit wedding processions were banned in more than 47 percent of villages surveyed, as were festival processions in more than 24 percent of villages.[255] The same survey also reported that in at least one village in Alwar district in Rajasthan, no marriage ceremonies for Dalits had taken place in several years as the upper-castes refused to allow any *baraats* (wedding processions) to come to the village.[256] Adding to Dalits' humiliation, in 8.4 percent of villages surveyed in the study, Dalits must seek the permission of the upper-castes to marry, and in up to another 10 percent of the villages Dalits are compelled to seek blessings on their marriages from the upper-castes.[257] These acts of public subordination—informal sanctions surrounding marriage activities which upper-caste members are freely permitted to carry on in public—are one of the most harshly enforced and widespread "untouchability" practices to continue today. As a result of the bans on marriage celebrations, many Dalit weddings are carried out quietly without the traditional forms of celebration.[258]

Condemnation for marriage between Dalits and caste members can be quite severe, ranging from social ostracism to punitive violence, including large-scale attacks on Dalit communities.[259] Dalits who have married "above" their caste have reportedly been forced to break all ties with their families. In Attirpa, Kerala, a Dalit girl reported that although she was happy in her marriage she was no longer permitted to see her parents or her natal

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253 Shah, et al., *Untouchability in Rural India*, p. 69.
254 Ibid.
255 Ibid. *See also* Ibid., p. 65 (Table 2.1).
256 Ibid., p. 63.
257 Ibid., p. 66 (Table 2.1); p. 85 (Table 2.7).
258 Ibid., p. 81.
259 Human Rights Watch, *Caste Discrimination: A Global Concern*, p.11.

family.[260] It seems that in instances where marriage between Dalits and caste-members is permitted, the caste family may condition it on rejection of contact with the Dalit family.[261]

Marriages between Dalits and non-Dalits are frequent flashpoints for conflict. Upper-caste dominated *panchayats* (village councils) have been known to extra-judicially punish inter-caste marriages between Dalits and non-Dalits through public lynching of couples or their relatives, murder (of the bride, the groom, or their relatives), rape, public beatings, and other sanctions.[262] In May 2000 in Hardoi district in Uttar Pradesh, a police constable enraged by his daughter's marriage to a Dalit was joined by other relatives in shooting and killing four members of his son-in-law's family.[263] On August 6, 2001, also in Uttar Pradesh, an upper-caste Brahmin boy and a lower-caste Jat girl were dragged to the roof of a house and publicly hanged by members of their own families as hundreds of spectators looked on. The public lynching was punishment for refusing to end an inter-caste relationship.[264]

b. Forced prostitution and rape of Dalit women as an impediment to marriage

The rape of Dalit women by landlords and the caste-based practice of prostitution (see Section V(B)(4)(b)) deny Dalit women the right to marry as there are strong social taboos in India against marrying a woman who has had previous sexual relations; once a woman has been raped, she becomes unmarriageable.[265]

c. Child marriage

Although child marriage is illegal in India, the practice remains rampant, particularly in underdeveloped regions where economic pressure may force families into marrying off children at early ages in order to lighten the economic burden on families with daughters. This is often the case among Dalits. A 12-year old Dalit girl, Chenigall Suseela, was married

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[260] Shah, et al., *Untouchability in Rural India,* p. 130.

[261] Ibid.

[262] Human Rights Watch, *World Report 2006: India*, p. 2, http://hrw.org/wr2k6/pdf/india.pdf (accessed February 7, 2007).

[263] Human Rights Watch, *Caste Discrimination: A Global Concern*, p 11. .; Ramdutt Tripathi, "Arrests Over India Caste Deaths," *BBC News,* May 8, 2000, http://news.bbc.co.uk/hi/english/world/south_asia/newsid_740000/740701.stm (accessed February 7, 2007).

[264] Stephanie Nolen, "Cross-caste teen lovers brutally slain Families charged in torture, killing of Indian couple who defied ingrained tradition," *Globe and Mail* (Toronto), August 9, 2001.

[265] Human Rights Watch, *Broken People*, p. 31.

off by her parents without her consent in Telangana, Andhra Pradesh, in 2003.[266] Two years later she ran away from her husband, whom she claimed abused her, and threatened to commit suicide if forced to return. Suseela desired to return to school and sought help from the police and appealed to village elders. After initial refusal by elders from both her and her husband's village, Suseela's persistence and determination resulted in what is thought to be the first annulment of a child marriage in India in June 2005.[267] Suseela's case is significant as she faced opposition to claiming her right to not be married in childhood and to choose her spouse due to her status as a Dalit and seemingly received little help from the police when she reported her situation.[268] Sadly, there are many more Dalit children who are forced into early marriage by economic need and do not have the resources to demand their rights.

The prevalence of rape in villages also contributes to the greater incidence of child marriage in these areas. Early marriage between the ages of 10 years and 16 years persists in large part because of Dalit girls' vulnerability to sexual assault by upper-caste men and by parents' fear that their daughter will not be marriageable once she is raped.[269]

d. Inequality of women in family law

India's marriage and divorce laws still do not grant equality to women despite the Constitution's guarantees to women of equal rights, liberty, justice, and the right to live with dignity.[270]

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[266] Omer Farooq, "Indian girl, 14, wins a divorce: A 14-year-old girl in the southern Indian state of Andhra Pradesh has won a battle to have her two-year marriage to a teenage boy annulled," *BBC News*, June 22, 2005, http://news.bbc.co.uk/2/hi/south_asia/4120238.stm (accessed February 7, 2007).

[267] Ibid.

[268] Chenigall Suseela received a national bravery award for her courage in fighting her child marriage and for insisting on continuing her education. See, "Bravery award for gutsy Dalit girl," *The Hindu*, January 25, 2006, http://www.hindu.com/2006/01/25/stories/2006012521620500.htm (accessed February 7, 2007).

[269] Ibid., p. 31.

[270] Ibid., p. 39, fn. 55 and accompanying text.

4. Ensure Dalits' right to own property alone as well as in association with others

> *Article 5 (d) (v): The right to own property alone as well as in association with others.*

The right to own property is systematically denied to Dalits. Landlessness—encompassing a lack of access to land, inability to own land, and forced evictions—constitutes a crucial element in the subordination of Dalits. When Dalits do acquire land, elements of the right to own property—including the right to access and enjoy it—are routinely infringed.[271] Land reform legislation is neither implemented nor properly enforced. Dalits' efforts to secure land have been met with State violence or retaliation by private actors in the form of violence or economic sanctions.

a. Landlessness: lack of access to land, inability to own land, and forced evictions

Denial of the right to own property is at the very core of the caste system. R. Balakrishnan, then-Chairman of the Tamil Nadu State Commission for Scheduled Castes and Scheduled Tribes told Human Rights Watch:

> The caste system is an economic order. It prevents someone from owning land or receiving an education. It is a vicious cycle and an exploitative economic arrangement. Landowning patterns and being a high caste member are co-terminous. Also, there is a nexus between being lower-caste and landlessness... Caste is a tool to perpetuate exploitative economic arrangements.[272]

The Special Rapporteur on housing has also expressed his concern with the extreme violations of Dalits' human rights, including with respect to land and housing rights. The Special Rapporteur's 2005 Annual Report notes: "A majority of Dalits are still prevented from owning land and are forced to live on the outskirts of villages, often on barren land."[273]

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[271] Ibid., p. 29.

[272] Ibid., p. 27.

[273] Special Rapporteur of the Commission on Human Rights on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Annual Report 2005 (61st CHR session), Report E/CN.4/2005/48, para 62.

Denial of the right to own property is also practiced through forced evictions.[274] On February 2, 2003, for example, 7,000 Dalits were evicted from their residences at Belilious Park, in Calcutta, West Bengal.[275] To make way for a development and beautification scheme envisioned for the park, an approximately 500-strong Rapid Action Force, accompanied by ambulances, fire brigades and two or three bulldozers, forcibly entered the Dalit community in Belilious Park, evicted 700 families, and demolished hundreds of brick houses, a school building, temples, and statutes.[276]

A lack of access to land keeps Dalits in a state of economic dependency. Most rural Dalits are agricultural laborers who are economically dependent on their employers and therefore less likely to report abuse.[277] Economic dependency on agricultural jobs also makes Dalits more susceptible to seasonal migratory work patterns (see Section VIII(D)(1)(a)).

b. Prevention of access to, and enjoyment of, own property

Even Dalits who do own land often do not have access to it, or are otherwise prevented from enjoying it. For example, a 1996 study by a NGO, which undertook a door-to-door survey of 250 villages in the state of Gujarat, found that, in almost all villages, many had no record of their land holdings, those who had title to land had no possession, and those who had possession had not had their land measured or faced illegal encroachments from upper-castes.[278]

c. Failure of land reform legislation and efforts

Land reform laws that were intended to provide reparations for the historic landlessness of Dalits[279] have failed due to a lack of political will and bureaucratic commitment, loopholes in the laws, the tremendous manipulative power of the landed classes, excessive

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[274] Human Rights Watch, *Broken People*, p. 99.

[275] OMCT/HIC-HLRN, "Joint Urgent Action Appeal: Forced Eviction of 7,000 Dalits in India," July 24, 2003, http://www.hlrn.org/cases_files/IND-FE%20%20240703.doc (accessed February 7, 2007).

[276] Ibid.

[277] Human Rights Watch, India, *Small Change: Bonded Child Labor in India*, Vol.15, No.2(C), January 2003, p. 42 [hereinafter *Small Change*].

[278] Human Rights Watch, *Broken People*, p. 29.

[279] NCDHR Response to the Special Rapporteur's Questionnaire, p. 23.

interference of courts,[280] and problems in ensuring that oral tenancies are truthfully recorded in land records so as to enable implementation of the land to the tiller policy.[281] The Special Rapporteur on housing has also attributed this failure to the government, noting "…weak legislative provisions, inadequate implementation, and a lack of State commitment."[282] The evidence of this failure is clear; for example, Dalit landlessness is estimated at around 75 percent. Of surplus land collected pursuant to land reform laws, only 69.5 percent has been distributed, of which Dalits have received only 34.6 percent.[283]

d. State suppression of movements requiring land reform and retaliatory violence and economic sanctions against Dalits by private actors

See Sections V(A)(1)(a)(ii); VIII(B) and VIII(E) respectively.

5. Ensure Dalits' right to freedom of thought, conscience and religion

Article 5 (d) (vii): The right to freedom of thought, conscience and religion.

Dalits in India face a number of restrictions on their right to freedom of thought, conscience and religion. Caste-based human rights violations that are the subject of this report are often given religious sanction under the theory that Dalits must live segregated lives and perform menial occupations because they are born into a caste outside of the Hindu *varna* system. As a result, Dalits are routinely denied entry into Hindu temples (see Section VIII(F)(2)(b)). Dalits have responded to ill-treatment by upper-caste Hindus by converting en masse to Buddhism, Christianity, and historically to Islam. The loss of constitutional privileges upon conversion, however, serves as a serious impediment to their freedom to choose their religion. Additionally, most Dalits are ultimately unable to escape their treatment as "untouchables" regardless of the religion they profess.[284] The introduction of anti-conversion legislation in several states has further made religious conversion extremely

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[280] NHRC Report, Section V, p. 85.

[281] Ibid., Section VI, p. 125.

[282] Special Rapporteur of the Commission on Human Rights on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Annual Report 2005 (61st CHR session), Report E/CN.4/2005/48, para. 62.

[283] NCDHR Response to the Special Rapporteur's Questionnaire, p. 23.

[284] Human Rights Watch, *Broken People*, p. 27.

difficult if not impossible. Finally, Dalits may become targets of forced "reconversions" to Hinduism by *sangh parivar* groups.[285]

a. Loss of constitutional privileges upon conversion

While the Indian Constitution grants certain constitutional privileges to Hindu, Buddhist, and Sikh Dalits (see Section V(B)), the same benefits do not extend to those who convert to Christianity or Islam. Dalit Christians and Muslims lose their "scheduled caste" status even though they are unable to escape discriminatory treatment from Christians and Muslims. Many Dalit Christians must pray in separate or segregated churches, bury their dead in separate cemeteries, and endure discrimination by non-Dalit priests and nuns.[286]

Descendants of Dalit converts to Islam also face discrimination at the hands of Muslims who trace their ancestry to Arab, Iranian, or Central Asian origin.[287] Descendants of indigenous converts are commonly referred to as *ajlaf* or "base" or "lowly."[288] Further, upper-caste Muslims often deny Dalit Muslims entry to graveyards for burial.[289] The continued practice of "untouchability" against Dalit Christians and Muslims undermines the argument that these communities should lose constitutional privileges upon conversion, and have led to charges that the Indian government's practice of assigning scheduled caste status on the basis of religion amounts to religious discrimination.[290] Additionally, Dalit

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[285] In one notable incident in the state of Orissa, seven Dalit women, who had embraced the Christian faith of their own volition, were physically abused and forcibly tonsured before being forcibly "reconverted" to Hinduism. http://www.pucl.org/Topics/Religion-communalism/2004/kilipal.htm (accessed February 7, 2007).

[286] In a village in Tamil Nadu, for instance, discrimination on the basis of caste has been practiced by Christians for decades. In the village's church Dalit Christians are made to sit apart from other Christians and must stand while talking to the priest. Like upper-caste Hindus, Christians in this village mete out severe punishment against Christian Dalits who question discriminatory traditions. In February 1999, when a Dalit priest attempted to conduct a funeral procession for his late mother through the main street of his town, Christians attacked the procession with guns, homemade weapons, and stones and verbally abused the Dalits with derogatory caste remarks and threats; more than 100 people were injured. Caste Christians Discriminate against Dalit Priest, National Public Hearing, April 18-19, 2000, Chennai-Tamil Nadu, Case Papers: Summary Jury's Interim Observations & Recommendations, Vol. 1, p. 259.

[287] Salil Kader, "Muslims Infected by Caste Virus," March 14, 2006, http://www.indianmuslims.info/articles/others/salil_kader_muslims_infected_by_caste_virus.html (accessed February 7, 2007).

[288] Yoginder Sikand, "The Dalit Muslims and the All-India Backward Muslim Morcha," December 16, 2004, *The South Asian*, available at: http://www.thesouthasian.org/archives/2004/the_dalit_muslims_and_the_alli.html (accessed February 7, 2007).

[289] Salil Kader, "Social Stratification Among Muslims in India," June 15, 2004, *Counter Currents*, http://www.countercurrents.org/dalit-kader150604.htm (accessed February 7, 2007).

[290] See Yoginder Sikand, "Muslim Dalit and OBC Conference: A Report," November 30, 2005, *The Milli Gazette*, http://www.milligazette.com/dailyupdate/2005/20051130-muslim-dalits.htm (accessed February 7, 2007) (arguing that the Indian government's practice of assigning scheduled caste status on the basis of religion amounts to religious discrimination). *See also* Yoginder Sikand, "The Dalit Muslims and the All-India Backward Muslim Morcha," December 16, 2004, *The South Asian*, http://www.thesouthasian.org/archives/2004/the_dalit_muslims_and_the_alli.html (accessed February 7, 2007). For the same claim with respect to Christian Dalits, *see* Minority Rights Group, "India's Dalit Christians face caste discrimination and loss of government

Christians and Muslims may be subject to multiple forms of discrimination on the basis of their caste and religion, a risk that has increased with the rise of Hindu nationalism in India.[291]

b. Anti-conversion legislation

Dalits' right to freedom of thought, conscience and religion is explicitly denied through legislation that prohibits or impedes religious conversion. Seven states, a majority of them ruled by the Hindu nationalist BJP—Orissa, Madhya Pradesh, Arunachal Pradesh, Chhattisgarh, Gujarat, Rajasthan, and Tamil Nadu—have introduced legislation designed to make conversion difficult or virtually impossible.[292] Four of the anti-conversion laws explicitly stipulate harsher punishments where the convert is a Dalit, tribal, female, or a minor.[293] Critics have argued that such bills represent a political move by Hindu nationalist groups to maintain their Hindu vote bank.[294] Notably, mass "re-conversions" to Hinduism engineered by VHP, often using threats and coercion, are allowed under these laws.[295]

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assistance," March 3, 2004, http://www.minorityrights.org/news_detail.asp?ID=230 (accessed February 7, 2007); *see also Appeal to Join Hands to End Discrimination Against Dalits*, All India Christian Council, http://www.aiccindia.org/newsite/0804061910/resources/appeal_to_join_hands.htm (accessed February 7, 2007).

[291] Human Rights Watch, *We Have No Orders to Save You*, pp. 39-40; *see also* Human Rights Watch, *Politics by Other Means: Attacks Against Christians in India*, Vol. 11, No. 6, September 1999.

[292] "Dalits to burn anti-conversion laws at Nagpur rally," *Indian Catholic*, October 11, 2006, http://www.theindiancatholic.com/newsread.asp?nid=3859 (accessed February 7, 2007); "Dalits in conversion ceremony," *BBC News*, October 14, 2006, http://news.bbc.co.uk/2/hi/south_asia/6050408.stm (accessed February 7, 2007).

[293] Daniel Blake, "100,000 Dalit Christians to Attend 'World Religious Freedom Day' Rally in India," *Christian Today*, October 11, 2006, http://www.christiantoday.com/article/100000.dalit.christians.to.attend.world.religious.freedom.day.rally.in.india/7943.htm (accessed February 7, 2007).

[294] One such bill was the controversial Prohibition of Forcible Conversion of Religion Bill, passed in the state of Tamil Nadu on October 31, 2002. The law was widely criticized for making it more difficult for poor people, persecuted minorities, and those ostracized under the caste system to convert to another religion. Human Rights Watch, *World Report 2003*, p. 240. The law nevertheless found support with the BJP-led federal government (Ibid.), and remained in force until June 7, 2006, when it was repealed by the Tamil Nadu Prohibition of Forcible Conversion of Religion (Repeal) Act, 2006 (Tamil Nadu Prohibition of Forcible Conversion of Religion (Repeal) Act, 2006 - www.tn.gov.in/acts-rules/law/ACT_10to12_131_07JUN06.pdf (accessed February 7, 2007). More recently, on September 19, 2006, the state of Gujarat passed a law that classifies Jainism and Buddhism as branches of Hinduism, even though the Indian constitution classifies the two as separate religions. The new law makes conversion from Hinduism to Buddhism or Jainism easier, because the conversion is deemed to be an "inter-denominational" one. However, the purpose of the bill, according to government critics, is to ensure that Dalits do not convert to Islam or Christianity, and that those who convert to Buddhism or Jainism remain a part of Hinduism and thus remain likely to vote for the Hindu nationalist BJP, which heads the state of Gujarat. The leader of Gujarat's opposition Congress party said that the BJP-led government of Gujarat was using the law as a "tool" to maintain its bedrock of votes. Rajeev Khanna, "Anger Over Gujarat Religion Law," *BBC News*, September 20, 2006, http://news.bbc.co.uk/2/hi/south_asia/5362802.stm (accessed February 7, 2007). Dalit leader Udit Raj, chairman of the All India Confederation of SC/ST Organization poignantly asserts: "[Hindu extremists are trying to assimilate] Buddhism and Jainism into Hinduism. Where is the freedom to choose your own faith?" "Dalits to Burn Anti-Conversion Laws at Nagpur Rally," *The Indian Catholic*, October 11, 2006.

[295] "VHP orchestrates mass reconversion in Orissa," *Deccan Herald*, May 2, 2005, http://www.deccanherald.com/deccanherald/may22005/national13399200551.asp (accessed February 7, 2007).

6. Ensure Dalits' right to freedom of opinion and expression

Article 5 (d) (viii): The right to freedom of opinion and expression.

Dalits' right to freedom of opinion and expression is compromised by police abuse of Dalit activists (see Section V(A)(1)(a)(ii)), retaliatory attacks by private actors that are carried out with impunity (see Section VIII(B)), and social and economic boycotts against Dalits (see Section VIII(E)). These actions often result when Dalits refuse to carry out caste-based tasks or seek to defy the social order; they frequently entail punishment of entire communities.[296] As the National Commission for Scheduled Castes and Scheduled Tribes surmises: "Whenever Dalits have tried to organize themselves or assert their rights, there has been a backlash from the feudal lords resulting in mass killings of Dalits, gang rapes, looting and arsoning" of Dalit villages.[297]

7. Ensure Dalits the right to freedom of peaceful assembly and association

Article 5 (d) (ix): The right to freedom of peaceful assembly and association.

Though the right to freedom of peaceful assembly and association is enshrined in Article 19 of the Indian Constitution, Dalit protests are often met with police violence or arbitrary arrest and detention. Dalit activists have been detained and charged under draconian national security and anti-terrorism laws (see Section V(A)(1)(a)(ii)). In addition, police have made use of the Sedition Act, embodied under Indian Penal Code Section 124A, to prohibit peaceful meetings and protests.[298] A number of such protests emerge in response to the desecration of statues of prominent Dalit Dr. B.R. Ambedkar by upper-caste community

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[296] Human Rights Watch, *Caste Discrimination: A Global Concern*, p. 20. A June 1997 fact-finding mission by the People's Union for Civil Liberties, India's largest civil rights organization, found that in caste clashes in Madurai district, Tamil Nadu, "Dalits were the worst affected in terms of property loss and physical injuries sustained... due to violent attacks on them" and that it was their "increased political consciousness...regarding their fundamental social, political and economic rights expressed in terms of demands for social equality [and] equitable distribution of resources" that played a major role in the attacks against them. Human Rights Watch, *Broken People*, p. 85 (citing People's Union for Civil Liberties, "Final Report of the PUCL-Tamil Nadu Team that Inquired Into Caste Disturbances in Southern Districts of Tamil Nadu," (Madras: PUCL, 1997)).

[297] Human Rights Watch, *Broken People*, p. 29 (citing National Commission for Scheduled Castes and Scheduled Tribes, *Highlights of the Report of the National Commission for Scheduled Castes and Scheduled Tribes for the Years 1994-95 & 1995-96* (New Delhi, Government of India, 1997), p. 2).

[298] Ibid., p. 161.

members resentful of these statues in public spaces.[299] As one of the chief architects of India's constitution and a Dalit leader, statues of Dr. Ambedkar represent to Dalits the potential for "education, success, contribution to the political world of India, courage, [and] empowerment through relationship to government…"[300] When Dalits have protested such vandalism, the police and upper-caste community members have often responded with violent attacks and arbitrary arrests.[301]

In November 2006 the entire state of Maharashtra was engulfed in protests by Dalits after upper-caste community members desecrated a Dr. Ambedkar statue in Kanpur, Uttar Pradesh.[302] While the mob violence, including the burning of a train, cannot be justified, the reprisals were extreme. In response to the protests, a Dalit youth was lynched, and the police opened fire in Osmanabad, killing two people.[303] Moreover, a curfew was declared in four cities, where large-scale violence had erupted.[304] In light of the violence, Prime Minister Manmohan Singh has convened a meeting for the United Progressive Alliance-led government to review the progress of development projects for Dalits.[305]

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[299] Shah, et al., *Untouchability in Rural India*, p. 150. The late Dr. B.R. Ambedkar, the architect of the Indian constitution and a Dalit, is seen as a champion of Dalit rights and is a hero to many Dalits.

[300] Dalit groups mobilize to get local authorities to allocate land for statues of Dr. Ambedkar, and even poor Dalits will contribute the little they have to build memorials of him. Ibid.

[301] See, e.g., Ibid., pp. 150-51 (describing one such incident beginning in 1994 in Karanai village in Chengai district, Tamil Nadu, which resulted in ongoing conflict between Dalits and non-Dalits that lasted until 1997); Human Rights Watch, *Broken People*, p. 127; "What makes Dalits angry?" *IBN Live*, December 1, 2006, http://www.ibnlive.com/news/what-makes-the-dalits-of-maharashtra-angry/27440-3.html# (accessed February 7, 2007).

[302] "What makes Dalits angry?" *IBN Live*, December 1, 2006, http://www.ibnlive.com/news/what-makes-the-dalits-of-maharashtra-angry/27440-3.html# (accessed February 7, 2007).

[303] Ibid.

[304] Ibid.

[305] Mukesh Ranjan, "UPA to review progress of projects for SC/STs on Dec 9," *Financial Express*, December 3, 2006, http://www.financialexpress.com/fe_full_story.php?content_id=148015 (accessed February 7, 2007).

The Ramabai Killings

The Ramabai killings of July 1997 are a notorious example of the use of excessive force by the police in response to peaceful and democratic protests.[306] On July 11, police opened fire on a crowd of Dalits protesting the desecration of a statue of Dr. B.R. Ambedkar in their settlement in Bombay.[307] According to Human Rights Watch's investigations, the firings—in which 10 people were killed and 27 were injured—were both unprovoked and caste motivated.[308] The incident led to significant unrest throughout the state of Majarashtra, including rioting and social boycotts against protesting Dalits.[309] According to the *Times of India*, "the people owing allegiance to the ruling alliance parties had made determined efforts to terrorize and punish the Buddhists [converted Dalits] for having dared to protest against the shameful act of desecration of the Ambedkar statue."[310] In one such instance, a Dalit woman was stripped and paraded naked around Karanja-Ghadge village in Wardha district, and later allegedly framed for murder by the police after she complained of her ill-treatment.[311]

E. Ensure Dalits' economic, social and cultural rights

Article 5 (e): Economic, social and cultural rights.

Dalits' economic, social and cultural rights are routinely infringed by State and private actors with respect to all elements of the right to work (including in particular the right to free choice of employment and just and favorable conditions), the right to form and join trade unions, the right to housing (through segregation, discrimination in urban

[306] NHRC Report, Section VI, p. 116.

[307] Human Rights Watch, *Broken People*, p. 127.

[308] Ibid., p. 135.

[309] Ibid., p. 129.

[310] Ibid., p. 129 (citing "Dalit woman Stripped and paraded naked, says IPHRC report," *The Times of India* (Bombay), November 1, 1997).

[311] Ibid. A commission of inquiry, established almost immediately after the killings, determined that the police firing on the mob was "indiscriminate, unwarranted, unprovoked and unjustified." "Gundewar Commission Report Submitted," *Indian Express*, August 8, 1998. Nevertheless, the Police Sub-Inspector, who ordered the firing, was not criminally charged until four years later, in 2001; the charge against him was culpable homicide not amounting to murder. "Kadam will be Prosecuted in Ramabai Nagar Case," *Times of India*, August 25, 2001. While he was finally arrested in 2002, he was released on bail in January 2003. "Sessions Court Grants Bail to Manohar Kadam," *Economic Times*, January 5, 2003. There have been no publicly available reports on his case since then.

environments and limits on the right to own property), the right to access particular services in a non-discriminatory manner, the right to education and training, and rights regarding equal participation in cultural activities, such as wedding processions.

Box 7: Use of economic and social boycotts against Dalits

One practice that particularly influences the overall enjoyment of economic and social rights is the upper-caste imposition of social and economic boycotts against Dalits as a form of retaliation for assertion of rights. These boycotts are reinforced by the *panchayat* (village council) who levy fines against upper-caste individuals who refuse to participate.[312]

In April 1998 upper-caste community members—reportedly angered by the election of a Dalit to the local *panchayat* and by Dalit attempts to increase their participation in village politics and activities—imposed a complete social boycott against Dalits in a village in Gujarat. Upper-caste community members were instructed not to supply anything, even basic necessities, to Dalits, and landowners were told to fire Dalit farmhands. Any upper-caste person found to be in violation of the boycott was fined and threatened. When Dalits tried to file a complaint for authorities to intervene, they were told that political pressure on police meant that a complaint could not be registered. Dalits continued to be denied basic necessities such as access to potable water, milk, and other daily needs even after the cases were filed.[313]

[312] Human Rights Watch, *Broken People*, p. 30.

[313] Directions for relief were made only after the intervention of the NHRC. Social Boycott in Devalia, National Public Hearing, April 18-19, 2000, Chennai-Tamil Nadu, Case Papers: Summary Jury's Interim Observations & Recommendations, Vol. 1, pp. 252-54.

1. Ensure Dalits' rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration

> *Article 5 (e) (i): The rights to work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration.*

The denial of the right to work and free choice of employment lies at the very heart of the caste system. Denial of free choice of employment and allocation of labor on the basis of caste are fundamental tenets of the caste system and are integral to sustaining caste inequality and hierarchy.[314] Dalits' talents, merits, and hard work are of little consequence in a system where occupational status is determined by birth. Dalits are forced to work in "polluting" and degrading occupations such as manual scavenging and are subject to exploitative labor arrangements such as bonded labor, migratory labor, and forced prostitution. Dalit children are also vulnerable to child labor in these and other areas. Dalits are also discriminated against in hiring and in the payment of wages by private employers. Dalits' attempts to enforce their rights are met with retaliatory violence (see Section VIII(B)) and social and economic boycott[315] (see Section VIII(E)).

In its combined Second and Third periodic reports to the CEDAW Committee, the Government of India reports that merely "stray cases [of bonded labor] are reported from time to time."[316] This is in direct contradiction to the overwhelming amount of evidence of the Dalit community's continuing vulnerability to bonded labor. The government neglects to even mention caste discrimination in discussing indebtedness among the Dalit community, instead pointing to their poverty and to alcoholism as one of the reasons for their continued indebtedness and exploitation.[317] Additionally, the effectiveness of the Government's measures is not critically examined. While the government reports on the number of scavengers, bonded labors, and the like who have been "rehabilitated," it fails to estimate the number of Dalits who remain victims to these dehumanizing practices. Still, the

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[314] Human Rights Watch, *Small Change*, p. 41.

[315] Ibid., p. 43, citing Human Rights Watch interview with Joy Maliekal, Mysore, Karnataka, March 30, 2002.

[316] India's Combined second and third periodic reports to CEDAW, Oct. 19, 2005, CEDAW/C/IND/2-3, para. 101.

[317] Ibid. para. 104.

government does acknowledge that it "has a lot more to do to fulfill the Constitutional commitment of raising the status of [Scheduled Castes/Scheduled Tribes] to that of the rest of the population."[318]

a. Manual Scavenging

Manual scavenging is a practice by which Dalits remove excreta from public and private dry pit latrines and carry them to dumping grounds and disposal sites.[319] Though long outlawed, the practice of manual scavenging continues in most states,[320] and will continue as long as dry latrines are used.[321] In 2002-03 the Union Ministry for Social Justice and Empowerment admitted the existence of 6.76 lakh (676,000) manual scavengers in India and the presence of 92 lakh (9,200,000) dry latrines, spread across 21 States and Union Territories.[322] According to unofficial estimates, the number of manual scavengers in India may be as high as 1.3 million.[323] Manual scavengers are employed by private and public employers, including the military engineering services, the army, the railways, and other organs of the state.[324]

The occupation of manual scavenging is both caste-based and hereditary.[325] It is also the only economic opportunity available to many Dalit women hailing from scavenger sub-

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[318] Ibid para. 113.

[319] Massachusetts Institute of Technology, *From Promise To Performance: Ecological Sanitation As A Step Toward The Elimination Of Manual Scavenging In India*, September 2006, p. 6, http://mit.edu/phrj/dalit_report_final.pdf (accessed February 7, 2007).

[320] Human Rights Watch, *Broken People*, p. 141.

[321] According to Bejawada Wilson, national convener of the Safai Karamchari Andolan: "as long as dry latrines remain in existence, the scavengers to clean the same will also remain." Annie Zaidi, "India's shame," *Frontline*, vol. 23, issue 18, September 9-22, 2006.

[322] Ibid.

[323] Ibid.

[324] NCDHR Response to the Special Rapporteur's Questionnaire, p. 24.

[325] Human Rights Watch, *Broken People*, p. 142. C. Narayanama, working in Anantapur municipality, Andhra Pradesh, explained how she inherited her job of manual scavenging:

> My elder sister, Mariyakka married C. Kadirappa, but had no children. She brought me from Itukalapalli (my native place) and made me marry her husband. She died after three years due to severe whooping cough. (Could it have been due to the practice of manual scavenging?) I had to adopt her work of manual scavenging because of heredity. My sister adopted the work of manual scavenging from her mother-in-law.

"Safai Karamcharis in Anantapur District," Case Papers: Summary Jury's Interim Observations & Recommendations, National Public Hearing, April 18-19, 2000, Chennai-Tamil Nadu, Vol. 1, pp. 39-40. *See also*: As Meena, a manual scavenger in her mid-twenties, explained to *Frontline* in 2006:

> This is what we've been doing for generations and nobody gives us other work. In fact, my mother was married to my father based upon the fact that he lived in a busy, crowded area and there was that much more to carry.

Annie Zaidi, "India's shame," *Frontline*.

castes,[326] with the result that more Dalit women and girls work as manual scavengers than Dalit men.[327] Manual scavengers are at the very bottom of the caste hierarchy; they also face discrimination from other Dalits who treat them as "untouchables," creating an unquestioned "'untouchability' within the 'untouchables…'"[328] The entrenched discrimination against manual scavengers makes it difficult to find alternative employment pursuant to government rehabilitation schemes, and even more difficult to convince scavengers that they are able to take on, or are "worthy of performing," different occupations.[329]

Manual scavenging is characterized by hazardous working conditions and health hazards. A manual scavenger from Paliyad village, Ahmedabad district, Gujarat, described how in the rainy season, the "water mixes with the feces that we carry in baskets on our heads, it drips onto our clothes, our faces. When I return home, I find it difficult to eat food…. But in the summer there is often no water to wash your hands before eating. It is difficult to say which [season] is worse."[330] Manual scavengers are routinely exposed to both human and animal waste without the protection of masks, uniforms, gloves, shoes, appropriate buckets, and mops.[331] This has severe repercussions for their health; the majority of scavengers suffer from anaemia, diarrhea, and vomiting, with 62 percent suffering respiratory diseases, 32 percent suffering skin diseases, 42 percent suffering jaundice, and 23 percent suffering trachoma, leading to blindness. Many scavengers have also died of carbon monoxide poisoning while cleaning septic tanks.[332] In Mumbai, for instance, Dalits are lowered into manholes to clear sewage blockages—often without any protection.[333] More than 100 workers die every year due to inhalation of toxic gases or drowning in excrement.[334] The fear

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[326] Massachusetts Institute of Technology, *From Promise To Performance: Ecological Sanitation As A Step Toward The Elimination Of Manual Scavenging In India*, September 2006, p. 6, http://mit.edu/phrj/dalit_report_final.pdf (accessed February 7, 2007).

[327] NCDHR Response to the Special Rapporteur's Questionnaire, p. 15.

[328] Human Rights Watch, *Broken People*, pp. 145-46 (citing Human Rights Watch interview with Bejawada Wilson, Bangalore, July 26, 1998, in which Wilson told Human Rights Watch, "Even other scheduled-caste people won't touch the safai karamcharis [manual scavengers]. It is 'untouchability' within the 'untouchables,' yet nobody questions it.").

[329] Ibid., p. 142 (citing a Human Rights Watch interview with Martin Macwan, New York, October 15, 1998. Martin Macwan is founder of Navsarjan, an NGO that has led the campaign to abolish manual scavenging in the western state of Gujarat describing what happens when Navsarjan had attempted to rehabilitate scavengers).

[330]Ibid., pp. 142-43, (quoting Leelaben of Paliyad village from Mari Marcel Thekaekara, "A continuing social outrage," *Frontline*, October 4–17, 1997).

[331] Massachusetts Institute of Technology, *From Promise To Performance: Ecological Sanitation As A Step Toward The Elimination Of Manual Scavenging In India*, September 2006, p. 20, http://mit.edu/phrj/dalit_report_final.pdf (accessed February 7, 2007).et al.,

[332] Annie Zaidi, "India's Shame," *Frontline*.

[333] Human Rights Watch, *Broken People*, p. 141.

of being fired by municipality officials keeps manual scavengers from demanding higher wages or sanitary instruments.[335]

Manual scavenging is neither justly nor favorably remunerated, and several family members (usually women and girls) often have to be engaged to do the work assigned to one individual. As a result many families have to borrow money from their upper-caste neighbors and consequently go into bondage (see Section VIII(E)(1)(b)). In addition, almost no compensation has been delivered to the families of manual scavengers who are killed cleaning sewers.[336]

These problems have not been alleviated by the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, or its rehabilitation program. For example, an increase in the number of dry latrines since 1989,[337] ineffectiveness in the training program[338] and a lack of co-ordination among responsible ministries[339] mean that despite the fact that the Act was intended to be fully implemented by October 2, 2002,[340] only 151,930 out of the total 676,009 manual scavengers identified as of 2004 by the NHRC have been retrained and 394,638 have been rehabilitated.[341] These failures reflect a fundamental lack of political commitment in the effort to eliminate manual scavenging.[342] They have necessitated the filing of a public interest litigation petition on behalf of manual scavengers before the Supreme Court in 2003 seeking the enforcement of the Act.[343] This petition alleges that manual scavenging still exists, including in public sector undertakings, and urges the Court to issue time-bound directions to the Government of India and to state governments to take effective steps to eliminate the practice and to simultaneously

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334 Kamdar Swasthya Suraksha Mandal files PIL in 2001, http://www.amrc.org.hk/5304.htm (accessed February 7, 2007).

335 Human Rights Watch, *Broken People*, p. 146 (citing Human Rights Watch interview, Ahmedabad district, Gujarat, July 23, 1998, "When we ask for our rights from the government, the municipality officials threaten to fire us. So we don't say anything. This is what happens to people who demand their rights").

336 Kamdar Swasthya Suraksha Mandal files PIL in 2001, http://www.amrc.org.hk/5304.htm (accessed February 7, 2007).

337 NCDHR Response to the Special Rapporteur's Questionnaire, p. 24.

338 For example, the training program it establishes is ineffective because it offers a low stipend and an inadequate period of training. A shortage of training instructions and lack of viable training programs further compound the problem. NHRC Report, Section V, p. 55.

339 Ibid.

340 Ibid., p. 54.

341 Ibid., p. 54.

342 Ibid., p. 126.

343 Safai Karamchari Andolan filed a public interest litigation petition in the Supreme Court in 2003. Viswanathan, S. , "Exposing An Abhorrent Practice," *Frontline*, February 15, 2006, http://www.countercurrents.org/dalit-viswanathan150206.htm (accessed February 7, 2007).

formulate and implement comprehensive rehabilitation plans.[344] The lack of political will of state governments to implement the Act was evidenced in 2004 when the Supreme Court requested the court presence of Secretaries of seven states for failure to file responses to the petition.[345] In response to the Supreme Court order, many states reported to the Court that no dry latrines existed in their states.[346]

b. Bonded Labor

There are an estimated 40 million bonded laborers in India, of whom 15 million are children.[347] The vast majority of these laborers are Dalits or tribals.[348] Bonded labor is sustained by the caste system, in particular through the traditional expectation of free labor and/or inadequate remuneration for work, the lack of Dalit ownership of land, social and economic boycotts levied by upper-caste community members (see Section VIII(E)),[349] police extortion and looting (see Section V(A)(1)(a)(v)), and by acts or threats of violence that prevent Dalits from reporting abuses against them (including that they are being held in bondage).[350]

Bonded labor also results from indebtedness to employers or moneylenders on whom Dalits must rely because of inadequate wages[351] and because of the reluctance of institutional agencies to lend to the poor in general and to Dalits in particular. Under the Bonded Labour System (Abolition) Act, 1976, payment of less than minimum wage for the purposes of working off a debt also amounts to bondage. Most agricultural laborers Human Rights Watch interviewed for a report published in 1999 were paid between Rs. 15 and Rs. 25 (US$0.38 to $0.63), or two to three kilograms of rice, per day, well below the minimum wage

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344 Ibid.

345 Venkatesan, J. , "Manual Scavenging: Court Summons Principal Secretaries", *The Hindu*, September 14, 2004, A2004091410E-933F-GNW.

346 Viswanathan, S. , "Exposing An Abhorrent Practice," *Frontline*, February 15, 2006, http://www.countercurrents.org/dalit-viswanathan150206.htm (accessed February 7, 2007). Petitioner-organizations countered such claims by Tamil Nadu with evidence that manual scavenging was still prevalent in the state. Due to such conflicting reports, the Supreme Court ordered the Government of India and state governments in April 2005 to "verify the facts and indicate within six months a time-bound programme if the existence of manual scavenging is confirmed." Ibid. At this writing, the petition was still pending before the Supreme Court.

347 Human Rights Watch, *Broken People*, p. 139.

348 According to one estimate 83.2 percent of bonded laborers belong to scheduled castes and scheduled tribes. NHRC Report, Section V, p. 64. Almost all bonded children interviewed for a 2003 Human Rights Watch report on bonded child labor in the silk industry were either Dalit or Muslim. Human Rights Watch, *Small Change*, p. 6.

349 Human Rights Watch, *Small Change*, p. 9.

350 Ibid., p. 10.

351 Ibid., p. 43 (citing Human Rights Watch group interview with Dalit villagers, Varanasi District, Uttar Pradesh, March 14, 2002).

prescribed in their state.[352] In 2002 Human Rights Watch interviewed Dalit villagers in Uttar Pradesh who weave saris on looms owned by traders and who are forced to labor on agricultural lands. "We have very little land, less than five acres," a Dalit woman told Human Rights Watch. "Yes, of course we work on the landlords' land."[353] In exchange for a day's labor, a worker receives five kilograms of wheat, worth about Rs. 40 (U.S.$0.83).[354] "They don't even measure the five kilograms," one man complained. "They just fill up a sack and bring it out to us."[355] Another man explained that they couldn't survive on the money earned from this and from sari weaving, so they had to take loans from the traders.[356]

While the Bonded Labour System (Abolition) Act, 1976 seeks to abolish all agreements and obligations arising out of the bonded labor system,[357] the extent to which bonded laborers have been identified, released, and rehabilitated in the country is negligible.[358] For example, out of the 3000 cases filed under the Act in Punjab since 1998, only 10 have completed the judicial process.[359] Debt relief legislation has been similarly ineffective, with the NHRC concluding that "the beneficial provisions of law, which could at least reduce debt burden of Scheduled Castes [,] have not been made use of to reduce the incidents of atrocities against Scheduled Castes related to indebtedness."[360] Rehabilitation programs for individuals who have been released from bonded labor are not successful due to their failure to ensure substantial alternative employment,[361] implement rehabilitation immediately after release,[362] and ensure timely provision of benefits.[363]

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352 Human Rights Watch, *Broken People*, p. 140.

353 Human Rights Watch, *Small Change*, p. 42. (citing Human Rights Watch group interview with Dalit villagers, Varanasi District, Uttar Pradesh, March 14, 2002).

354 Ibid. According to a local activist, workers in the community were receiving five kilograms of wheat solely because they had organized themselves; elsewhere workers received only two kilograms. Human Rights Watch, *Small Change*, p. 42 (citing Human Rights Watch interview with Lenin Raghuvanshi, People's Vigilance Committee for Human Rights, Varanasi District, March 14, 2002).

355 Ibid.

356 Ibid.

357 The Act aims to release all laborers from bondage, cancel any outstanding debt, prohibit the creation of new bondage agreements, and order the economic rehabilitation of freed bonded laborers by the state. It also punishes attempts to compel persons into bondage with a maximum of three years in prison and a Rs. 2,000 (US$50) fine.

358 Human Rights Watch, *Broken People*, p. 140.

359 NCDHR Response to the Special Rapporteur's Questionnaire, p. 24.

360 NHRC Report, Section V, p. 89.

361 Ibid., p. 67.

362 While the process of rehabilitation is supposed to immediately follow the release of a bonded laborer, this is rarely the case. In some cases the Certificate of Release from bonded debt is not issued, and there is a huge time lag between release and rehabilitation operations, resulting in many released laborers being unable to survive after their release and being forced to return to their captors. NHRC Report, Section V, p. 67-68.

363 Ibid., p. 67.

c. Forced Migratory Labor

The susceptibility of Dalits to forced migration for work has been outlined in Section VIII(D)(1)(a). Migrant laborers are particularly susceptible to abuse and exploitation; they are seldom paid the minimum wage, work long hours, live in subhuman conditions, and suffer physical abuse if they try to escape their place of work.[364] These dangers have not been addressed by the Inter State Migrant Workmen (Regulation of Employment and Service Conditions) Act, 1979. Rather, the NHRC has identified this Act as the least successful of all labor laws.[365] The NHRC attributes this failure to legal loopholes and to the apathy of political leaders in both sending and receiving states.[366]

d. Forced Prostitution – the *Devadasi* System

Dalit girls and women are additionally vulnerable to exploitative labor in the form of forced prostitution (see Section V(B)(4)(b)).

e. Child Labor

While a survey conducted by India's National Sample Survey Organization between 1999 and 2000 calculated 10.4 million working children, unofficial estimates reach 100 million.[367] A majority of these children are Dalits.[368] Dalit children are more likely to end up as child laborers due to their extreme poverty, the discrimination they face in schools,[369] and the need to support their families, including after episodes of violence in which their families' economic assets have been destroyed.[370]

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[364] NHRC Report, Section V, p. 78.

[365] NHRC Report, Section V, pp. 79-80.

[366] According to the NHRC, "Political leadership has shown no concern for the plight of migrant labourers. In the recipient States, it is directly responsible for virtually freezing the law on migrant labour in collusion with powerful land owners and other employers. In the home States, the political leadership has shown total apathy as it has not taken their case with the recipient States for enforcement of law and has also taken no steps to stop distress migration." Ibid., Section VI, p. 125.

[367] Ibid., Section V, p. 72.

[368] NCDHR Response to the Special Rapporteur's Questionnaire, p. 12. In the Bellary district, Karnataka, for example, 70 to 80 percent of the child labor population in iron ore and granite mines are Dalits. NCDHR Response to the Special Rapporteur's Questionnaire, p. 13.

[369] Human Rights Watch, *Small Change*, p. 43.

[370] Ibid. Child labor, especially in domestic and hotel work, also increases following upper-caste raids on Dalit villages. Human Rights Watch interview with Gilbert Rodrigo, Director, Legal Resources for Social Action (LRSA), Chengalpattu, Tamil Nadu, March 20, 2002. Ibid., p. 43.

A number of factors make Dalit children especially vulnerable to the types and effects of exploitative labor described above. For instance, migratory labor is especially pervasive amongst Dalits, and children are often expected to work alongside their parents in day-labor jobs.[371] Dalit children also perform bonded labor. Fourteen-year-old Ashish M. working in the silk industry told Human Rights Watch that he could not leave his loom owner because he was paying off an advance, which in two years he had reduced from Rs. 2,500 (U.S.$25) to Rs. 475 (US$9.90). "The owner pays, but deducts for the advance," he said. "He deducts but won't write off the whole advance…We only make enough to eat."[372] Dalit children, and girls in particular, are also exposed to the risks associated with manual scavenging both because of the hereditary nature of the work, and because they often must step in to assist their parents with their jobs.[373] The health risks for child manual scavengers are manifest (see Section VIII(E)(1)(a)). Health risks are also endemic to the practice of *devadasi* which is directed at the prostitution of Dalit girls (see Section V(B)(4)(b)).

While child labor laws (in particular the Child Labour (Prohibition and Regulation) Act, 1986) are generally not sufficiently enforced, Dalit children remain especially vulnerable to bonded and other exploitative labor arrangements. The NHRC has found that, at least in Andhra Pradesh, there is a lack of credible efforts by political leadership to ensure exemplary punishment of employers who use child labor.[374] This lack of accountability results from a number of factors, including the fact that upper-caste community members dominate local political bodies, the police and the judiciary, bonded labor vigilance committees, and child labor committees responsible for enforcing relevant laws.[375] Apathy and corruption also contribute to a denial of the problem by many government officials.[376] In some cases, the violations against Dalit children result from gaps in the law. For example, Dalit children are forced to work in industries considered "polluting," such as the leather industry, which is outside the Act because the Act does not cover home-based work or consider the leather industry hazardous.[377] Rehabilitation programs[378] accompanying the Act

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[371] "Economic, Social and Cultural Rights for Dalits in India: Case Study on Primary Education in Gujarat," Woodrow Wilson School of Public and International Affairs, p. 18.

[372] Human Rights Watch, *Small Change*, p. 31. (citing Human Rights Watch interview with 14-year-old boy, Varanasi, Uttar Pradesh, March 13, 2002).

[373] Human Rights Watch, *Broken People*, p. 148.

[374] NHRC Report, Section VI, p. 125.

[375] Human Rights Watch, *Small Change*, p. 42.

[376] Ibid., p. 6.

[377] NCDHR Response to the Special Rapporteur's Questionnaire, p. 12. Domestic labor and restaurant jobs were recently banned under the 1986 law, but predictably, a lack of implementation has made little difference. While a bill on providing benefits to unorganized labor,

also fail to adequately address child labor because they suffer from a lack of political commitment, non-enforcement, and weaknesses inherent in the Act itself.[379]

f. Discrimination in hiring and wage payments

Private employers routinely discriminate against Dalits both in hiring and in the payment of wages. This discrimination is felt acutely by Dalit women (see Section V(B)(4)(a)). The *Untouchability in Rural India* survey revealed that in 36 percent of the villages studied, Dalits were denied wage-paid employment in agriculture and in one-third of the villages were excluded from construction labor on the grounds that upper-caste community members did not want Dalits to "pollute" their homes. In 25 percent of the villages, Dalits received less than the market wage rate for their labor. According to NCDHR, "untouchability" was also practiced in the payment of wages such that "the Dalits received wages in cash or kind from a respectable distance so that physical touch of a Dalit was avoided."[380] Even well-educated Dalits are not immune from discrimination by private employers.[381]

Neither the Minimum Wages Act, 1948, nor the Equal Remuneration Act, 1976, sufficiently guard against these disparities. Specifically, the NHRC has concluded that the objectives of relevant laws have been soundly defeated by an inadequate and unresponsive enforcement machinery, the dominant social and economic position of the employer, a dilatory and ineffective adjudication process, the lack of alternative employment opportunities, and the

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including domestic labor, may soon be tabled in Parliament, it is unclear whether or not this bill will increase the protection afforded by child labor legislation. Oineetom Ojah, "Govt may table unorganised sector Bill in winter session," *The Financial Express*, November 21, 2006, http://www.financialexpress.com/fe_full_story.php?content_id=146944 (accessed February 7, 2007).

[378] NHRC Report, Section V, p. 73. Rehabilitation programs involve the establishment of special schools to provide non-formal education, vocational training, supplementary nutrition, a stipend, and health care; further, over 100 national rehabilitation projects are under implementation.

[379] NHRC Report, Section V, p. 74. In 2005, the Supreme Court issued notice to the Central government regarding the present Child Labour Act which it considers to be unconstitutional in the light of the right to education. *"Notice issued to Centre on pleas against child labour*," *The Hindu,* December 13, 2005, http://www.hinduonnet.com/2005/12/13/stories/2005121301720900.htm (February 7, 2007).

[380] Shah, et al., *Untouchability in Rural India*, pp. 94-95.

[381] Despite earning a Masters degree in economics from Gujarat University, the best job 24-year-old Arvind Vaghela could get was as a road sweeper. Vaghela's story underscored the experience of many other university-educated Dalits. In his city of Ahmedabad, "[n]early 100 of its council sanitation workers have degrees in subjects ranging from computing to law, but cannot get better jobs because they are Dalits." Dalit sweeper, Prakash Chauhan, had been hired by an accounting firm, but the firm subsequently fired him upon learning his caste from his school certificate. Chauhan, 32, expressed the frustration that Dalits with his educational achievements share: "Our parents had a dream that education would mean we would not have to do the jobs they did. It did not turn out that way." Randeep Ramesh, "Untouchables in new battle for jobs," *The Observer*, Oct. 3, 2004, http://www.netphotograph.com/bartholomew.tv/PDF/obs_041003_new_26_3413213.pdf (accessed February 7, 2007).

absence of government support.[382] Additionally, gaps in protection derive from the fact that the Minimum Wages Act does not apply to employers who employ less than 1,000 workers[383] and employers do not need to pay the minimum wage in cash if their payment of wages in kind have been customary and their continuance is necessary.[384] The latter provision is particularly problematic for agricultural laborers, a majority of whom are Dalits.[385] Dalits seeking the protection of these labor laws also risk retaliation, including being fired or physically assaulted.[386]

2. *Ensure Dalits' right to form and join trade unions*

> *Article 5 (e) (ii): The right to form and join trade unions.*

Dalits' right to form and join trade unions may be jeopardized in several ways. First, the Registrar of Cooperatives, the government agency in charge of overseeing the administration, working, and development of cooperatives,[387] has been unwilling to register a cooperative whose workers are illiterate—which Dalits often are, and in disproportionately greater numbers than the rest of the population (see Section VIII(E)(5)(c)).[388] Second, the Registrar will often "suspect" economic activities where no product is manufactured, and are unlikely to register such cooperatives. This negatively affects the millions of Dalits who are employed in various service-oriented occupations as rag-pickers, manual scavengers, cleaners, day laborers and the like.[389] Finally, Dalit workers are often excluded from the government's employment classificatory schemes, which define "worker" as someone with an employer.[390] Dalits who do not have employers are not classified as workers, and are therefore unable to form or join any unions.

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382 NHRC Report, Section V, p. 84.

383 Minimum Wages Act, 1948 [Act No. 11 of Year 1948, dated 15th. March, 1948] Section 3(1A) cited in NHRC Report, Section V, p. 81.

384 Ibid.

385 NHRC Report, Section V, p. 81.

386 Ibid., p. 83.

387 Krishan K. Taimni, "Cooperatives in the new environments: Role of the Registrar of Cooperative Societies in South Asia," *Sustainable Development Department, Food and Agriculture Organization of the United Nations*, February 9, 1998, http://www.fao.org/sd/rodirect/ROre0010.htm (accessed February 7, 2007).

388 "On the Magic of Being Work Sisters," *Business Line*, February 18, 2006.

389 Ibid.

390 Ibid.

3. Ensure Dalits' right to housing

Article 5 (e) (iii): The right to housing.

Despite the Committee's clarification that States Parties must "[t]ake measures against discriminatory practices of local authorities or private owners with regard to residence and access to adequate housing for members of affected communities,"[391] Dalits' right to housing is continuously undermined by deeply entrenched segregation, discrimination in housing in urban environments, and violations of their right to own property.

a. Segregation

See Section VI(A).

b. Discrimination in housing in urban environments

In urban environments, Dalits' right to housing is compromised by caste discrimination. For example, the unwillingness of upper-caste urban dwellers to live near or with Dalits means that Dalits seeking housing in urban areas will typically face a litany of questions from potential landlords seeking to determine their caste status.[392] Similarly, housing developments built by Dalits or occupied by Dalit residents fare adversely in comparison with the demand and price for comparable housing.[393]

c. Violations of Dalits' right to own property

See Section VIII(D)(4).

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[391] CERD General Comment XXIX - *Article 1(1) regarding descent*, para. 39.

[392] "Identity crisis for educated dalits?" *The Hindu*, April 14, 1999.

[393] For example, Gaurav Apartments, a housing development in a middle-class neighborhood in east Delhi, offers two or three bedroom apartments that would normally appeal to professionals seeking housing in the area. However, because the development was built by Dalits and because 60 to 70 percent of it is occupied by Dalits, the demand for the units and their price is significantly lower than it is for comparable units in the area. The price of a unit in Gaurav Apartments is Rs.1.7 million (US$38,041) whereas a comparable apartment in the neighborhood costs around Rs.2 million (US$44,749). "No takers for homes in Dalit apartments," *Indo-Asian News Service*, October 3, 2004. As a Dalit property dealer from the area explains: "Many clients have declined to buy or even rent a flat soon after looking at the huge portrait of B.R. Ambedkar at the entrance." "No takers for homes in Dalit apartments," *Indo-Asian News Service*, October 3, 2004.

4. *Ensure Dalits' right to public health, medical care, social security, and social services.*

> *Article 5 (e) (iv): The right to public health, medical care, social security and social services.*

Caste-based occupations that Dalits are made to perform, such as manual scavenging (see Section VIII(E)(1)(a)), and forced prostitution, routinely expose Dalits to serious and sometimes fatal health hazards, including exposure to HIV/AIDS. In addition, Dalits are frequently refused admission to hospitals and denied access to health care and treatment.

Being refused admission to hospitals, health care and treatment is a key way in which the Dalits' right to public health and social services is denied. The *Untouchability in Rural India* survey found that Dalits were denied entry into private health centers or clinics in 74 out of 348 villages surveyed, or 21.3 percent of villages.[394] Overall, the study found that in 30-40 percent of the villages surveyed, public health workers refused to visit Dalit villages.[395] In 15-20 percent of villages, Dalits were denied admission to public heath clinics, or if admitted received discriminatory treatment in 10-15 percent of the villages.[396]

The study also reported that Dalit women deal with government officials most frequently in attempting to access healthcare for themselves and their children and often encounter discrimination from auxiliary nurse-midwives and *anganvadi* workers (community development workers).[397] Dalits are denied entry to clinics, charged fees for services that should be free, and *anganvadi* workers may even refuse to visit Dalit hamlets.[398]

In Uttar Pradesh, *anganvadis* (community centers) are known to practice "untouchability" and as a result pregnant women are forced to go without health care.[399] Doctors at the local hospital in Pandalam Thekkekara, Kerala, are seen to spend much more time treating

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[394] Shah, et al., *Untouchability in Rural India*, p. 104 (Table 2.9).
[395] Ibid., p. 65 (Table 2.1).
[396] Ibid.
[397] Shah, et al., *Untouchability in Rural India*, p. 127.
[398] Ibid.
[399] Ibid.

upper-caste women than the Dalit women.[400] In Attirpa, Kerala, a non-Dalit *anganvadi* worker reportedly discriminated against her Dalit colleague.[401]

The general discrimination against Dalits in health care can also contribute to or exacerbate serious health problems such those associated with HIV/AIDS. Although HIV/AIDS affects a heterogeneous group of people in India, some of the risk factors (particularly "migration and mobility" and "low status of women")[402] point to a disproportionate impact on marginalized groups such as Dalits.[403] Dalit women and girls who are forced to become *devadasis* are at particular risk of contracting HIV.[404] Existing inequities and the stigma that accompanies HIV/AIDS also mean that Dalits infected by HIV/AIDS are vulnerable to increased social stigma and discrimination in access to education, health care, and other services as compared both with other Dalits and with non-Dalits who are HIV-positive.[405]

5. *Ensure Dalits' right to education and training*

Article 5 (e) (v): The right to education and training.

Dalit children face considerable hardships in schools, including discrimination, discouragement, exclusion, alienation, physical and psychological abuse, and even segregation, from both their teachers and their fellow students.[406] CERD has also noted the effects of this type of disparagement in stating "that the degree to which acts of racial discrimination and racial insults damage the injured party's perception of his/her own worth and reputation is often underestimated."[407] Caste discrimination persists even in

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[400] Ibid.

[401] Ibid.

[402] The World Bank, *HIV/AIDS South Asia- India; Risk Factors,* updated December 2006, http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/EXTSAREGTOPHEANUT/EXTSAREGTOPHIVAIDS/0,,contentMDK:20288516~menuPK:568874~pagePK:34004173~piPK:34003707~theSitePK:496967,00.html (accessed February 7, 2007).

[403] NESA LIFE WITH DIGNITY, HIV/AIDS Sector Support Team, http://www.nesauniverse.org/focusarea/hivf (accessed February 7, 2007).

[404] Human Rights Watch, *Broken People*, p. 151.

[405] Human Rights Watch, *Future Forsaken: Abuses Against Children Affected by HIV/AIDS in India,* (Human Rights Watch, July 2004), pp. 8-9 (explaining that several groups that already experience discrimination, including sex workers, children of sex workers, street children, children from lower-castes and Dalits, are vulnerable to increased discrimination when tested HIV-positive.) http://hrw.org/reports/2004/india0704/FutureForsaken.pdf (accessed February 7, 2007). *See also* Stigma and HIV/Aids- A Pervasive Issue, THE SYNERGY PROJECT, December 2004, p. 2, http://www.synergyaids.com/documents/BigIssues_StigmaRevDec04.pdf (accessed February 7, 2007).

[406] NCDHR response to the Special Rapporteur's Questionnaire, p. 10.

[407] CERD General Comment XXVI - *Article 6*, para. 1.

institutions of higher education. Dalit children's right to education is further eroded by their poverty and the generational repetition of under-education.[408] A majority of Dalit children must work to help ensure their families' economic survival. In addition their parents are far more likely to be illiterate.[409]

While the Constitution requires free and compulsory education for all children until age 14, the right to education free from discrimination is not secured for Dalit children. 99 percent of Dalit students are enrolled in government schools with substandard facilities that lack basic infrastructure, classrooms, teachers, and teaching aids.[410] Dalit schoolchildren also face discrimination and discouragement from higher-caste community members who perceive education for Dalits as both a waste and a threat.[411] Their hostility toward Dalits' education—which includes discrimination against Dalit teachers—is linked to the perception that Dalits are not meant to be educated, are incapable of being educated, or if educated, would pose a threat to village hierarchies and power relations.[412]

a. Segregation in classrooms and discrimination by teachers

Dalit children's right to education free from discrimination is constantly undermined by the treatment they receive at school. Teachers maintain and impart discriminatory attitudes in their classrooms, forcing children to sit in the back of the room, segregating Dalit children from non-Dalits during lunchtime,[413] forbidding non-Dalit children from sitting next to Dalit children or touching their plates (see Section VIII(F)(1)(c)), expressly limiting Dalit student participation in class, requiring Dalit children to take on additional custodial duties, subjecting them to verbal abuse, and grading them with unjustifiably low marks.[414]

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[408] "Economic, Social and Cultural Rights for Dalits in India: Case Study on Primary Education in Gujarat," Woodrow Wilson School of Public and International Affairs, p. 18.

[409] NCDHR response to the Special Rapporteur's Questionnaire, p. 10.

[410] "Economic, Social and Cultural Rights for Dalits in India: Case Study on Primary Education in Gujarat," Woodrow Wilson School of Public and International Affairs, p. 14. Dalit schoolchildren are by and large poorer than other students, and cannot afford either private tutoring or access to private education, which is generally of better quality. Ibid.

[411] NCDHR response to the Special Rapporteur's Questionnaire, p. 10.

[412] Ibid., citing A.R. Vasavi, et al., "Blueprint for Rural Primary Education: How Viable?" p. 3184, *Economic and Political Weekly,* 1997.

[413] "Economic, Social and Cultural Rights for Dalits in India: Case Study on Primary Education in Gujarat," Woodrow Wilson School of Public and International Affairs, p. 17.

[414] Ibid., p. 16.

Additionally, Dalit children are often subjected to corporal punishment by their teachers. As the Special Rapporteur on the right to education noted in his report before the 67th session of the then-Commission on Human Rights, "teachers have been known to declare that Dalit pupils 'cannot learn unless they are beaten.'"[415] These practices serve to discourage and alienate Dalit children, contributing to their high drop-out rates.[416] Even more perniciously such practices serve to instill and reinforce Dalit children's sense of inferiority, erode their sense of personal dignity and force them to internalize caste distinctions.[417]

b. Low enrollment and high drop-out rates of Dalit students

As a result of their discriminatory treatment, large numbers of Dalit children drop out of school, especially in the early elementary stages. Though the Committee has made clear that States Parties should "[r]educe school drop-out rates for children of all communities, in particular for children of affected communities, with special attention to the situation of girls,"[418] the statistics for the enrollment of Dalit children, especially girls, are a cause for distress. According to the 2002 India Education Report, school attendance in rural areas in 1993-1994 was 64.3 percent for Dalit boys and 46.2 percent for Dalit girls, compared to 74.9 percent among boys and 61 percent for girls from other social groups.[419] According to a 2001-2002 report prepared by the Indian government, "the drop-out rate in Scheduled Castes during 1990-91 was as high as 49.35 percent at primary stage and 67.77 percent at middle stage and 77.65 percent at secondary stage."[420] The statistics for higher education are no less alarming—the same government report states that enrollment of Dalit students

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415 The Special Rapporteur on education also noted, "Other studies have documented absenteeism, irregular attendance and negligence by teachers, who have in addition used Dalit and Adivasi children to do work for them, corporal punishment and fear of teachers - one reason cited by parents for not sending their children to school." Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, February 8, 2006 (62nd CHR session) E/CN.4/2006/45, paras. 84-85.

416 NCDHR response to the Special Rapporteur's Questionnaire, p. 10. A study of Dalit schoolchildren in Rajasthan revealed that fear of teachers as well as corporal punishments are factors that parents (especially of Dalit children) cite as constraining regular school attendance. Mona Jabbi and C. Rajyalakshmi, "Education of Marginalized Social Groups in Bihar," in A. Vaidynathan and P.R. Gopinathan Nair (Eds.), Elementary Education in Rural India: A Grassroots View, Sage Publication, New Delhi, 2001.

417 "Economic, Social and Cultural Rights for Dalits in India: Case Study on Primary Education in Gujarat," Woodrow Wilson School of Public and International Affairs, pp. 15-17.

418 CERD General Comment XXIX - *Article 1(1) regarding descent*, para. 45.

419 "Economic, Social and Cultural Rights for Dalits in India: Case Study on Primary Education in Gujarat," Woodrow Wilson School of Public and International Affairs, p. 14 (citing *India Education Report -- A profile of Basic Education*, Ed. by R. Govinda, Publishers: Oxford University Press, Delhi. March 2002).

420 NCDHR Response to the Special Rapporteur's Questionnaire, p. 10 (citing Report, National Commission for Scheduled Castes and Scheduled Tribes, pp. 151-183, Government of India, New Delhi, 1999-2000 & 2000-2001).

at graduate, post-graduate and professional/research/PhD levels is “abysmally low,” at 8.73 percent, 8 percent, and 2.77 percent respectively.[421]

Discrimination in schools and the resulting drop-out rates for Dalit children are intimately linked to child labor.[422] A social worker in Karnataka told Human Rights Watch: “A child will say to his or her parents, ‘The teacher told me not to come tomorrow, that I am no good for studying.’ Instead of asking why the teacher has said this, the parents will send the child to work.”[423]

c. Low literacy rates for Dalits

Low literacy rates for the Dalit population are a clear indication of the ways in which the school system fails Dalit children. The 2001 population census shows that the literacy rate among Dalits is 54.70 percent compared to 68.81 percent among others.[424] Illiteracy in turn results in a lack of gainful employment options for Dalits.[425]

d. Labor patterns (migratory and child labor) affect Dalits’ access to education

Migratory labor serves as a hindrance to education in that it prevents Dalit children from being able to continuously attend school and, ultimately, from being able to advance with their class (once students miss 18 days, they are no longer allowed to advance in the same grade).[426] Dalit parents generally take their children with them while searching for labor, and older boys and girls are expected to either work alongside their parents or stay at home to care for younger siblings.[427] Though the attendant problems of migratory work are visited on non-Dalit agricultural workers as well, they are especially pervasive among Dalits, who are

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[421] Ibid.

[422] Joy Maliekal, director of the Rural Literacy and Health Programme and national convenor of the Campaign against Child Labour told Human Rights Watch: “It is important to make the link between child labor and discrimination in school. In our experience, Dalit children are made to sit in the back and are asked to do work [i.e. chores rather than schoolwork].” Human Rights Watch, *Small Change*, p. 44.

[423] Ibid.

[424] Dalits and Primary Education, p. 3.

[425] Ibid., p. 14.

[426] “Economic, Social and Cultural Rights for Dalits in India: Case Study on Primary Education in Gujarat,” Woodrow Wilson School of Public and International Affairs, p. 19.

[427] Ibid.

overwhelmingly landless and engaged in agricultural work, and thus uniquely susceptible to forces that push them into migrant labor[428] (see Section VIII(D)(1)(a)).

e. Discrimination in Higher Education

Caste bias erodes Dalit students' right to education even in institutions of higher education. In September 2006 allegations of caste-based discrimination and intimidations surfaced at the All-India Institute of Medical Sciences, India's premier medical institute. In written complaints submitted to the director of the Institute, two first-year Dalit students complained of casteist remarks and various forms of harassment and intimidation from senior upper-caste students.[429] The complaints were accompanied by a memorandum signed by 40 students, recounting similar incidents of harassment and intimidation.[430] Similarly, Dalit doctors at the Guru Teg Bahadur Hospital have written about a "biased attitude towards reserved category junior residents."[431] The incidents of caste-based discrimination in institutions of higher learning are illustrative of the depth and breadth of anti-Dalit sentiment in education, and show that such biases transcend the rural/urban divide and affect the entirety of the education system, from elementary schools to universities.

f. Discrimination against Dalit teachers

Like Dalit students, Dalit teachers also face rampant discrimination; they too are segregated for purposes of food and water consumption.[432] Discrimination against Dalit teachers has at

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428 Ibid.

429 In the complaint, one of the students recounts the nature of the harassment he suffered at AIIMS:

> I have been subjected to mental and physical torture from my very first day in this institute...I was abused on my caste and...in the last few days my room had been locked from outside because of which I was unable to attend classes.

Abantika Ghosh, "Dalit students 'abused' at AIIMS," *The Times of India*, September 12, 2006.

430 Ibid.

431 As a member of Medicos Forum for Equal Opportunities said:

> Students and doctors of the reserved category are now being forced to stay in isolated groups and are increasingly feeling unsafe in an environment where there is discrimination and a failure of the local administration and the Health Ministry to redress specific instances of caste discrimination.

Bindu Shaja Perappadan, "Reserved Category Medicos Facing Discrimination," September 19, 2006, http://www.hindu.com/2006/09/16/stories/2006091616430400.htm (accessed February 7, 2007).

432 "Economic, Social and Cultural Rights for Dalits in India: Case Study on Primary Education in Gujarat," Woodrow Wilson School of Public and International Affairs, p. 17. In the village of Kumbhana in Gujarat, for instance, a Dalit teacher named Jignasha was told by the

times turned violent. In December 2005 Satyanarayan Prasad, a Dalit teacher, was assaulted in a village in Bihar by members of the dominant caste who could not accept the fact that their children were being taught by a Dalit. Prasad suffered serious head injuries as a result of the assault. When she attempted to lodge a complaint with the police, the police termed the incident as "insignificant."[433]

6. Ensure Dalits' right to equal participation in cultural activities

Article 5 (e) (vi): The right to equal participation in cultural activities.

a. Dalits prohibited from taking part in religious and cultural rituals and festivals

The denial of Dalits' right to equal participation in cultural activities is a core component of the caste system. The very fact of being a Dalit signifies being in a subordinate position vis–à-vis the rest of Hindu society, and exclusion from cultural activities is a clear way of demonstrating this separateness. Consequently, Dalits are routinely prevented from taking part in religious and cultural rituals and festivals, with clashes ensuing if they chose to disobey the prohibitions.[434] The various ways in which the marriage ceremony is circumscribed are illustrative of such prohibitions; Dalit bridegrooms are not permitted to partake in the marriage tradition of riding a mare through the village, and Dalit marriages in general must be performed very quietly, without the public pomp and processions that usually accompany upper-caste weddings.[435] The *Untouchability in Rural India* survey found that out of the 483 villages surveyed, a ban on marriage processions on roads was in place in 47.4 percent of villages, while a ban on festival processions on public roads was in place in 23.8 percent of villages.[436]

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school principal to keep her water pot separate from the water pots of other teachers. Ibid. Such segregation results from the belief held by non-Dalit teachers that Dalits are "polluted" and will therefore "pollute" their food and water.

433 Prakash Singh, "Dalit teacher assaulted in Bihar village," *NDTV*, January 19, 2006, http://www.ndtv.com/template/template.asp?category=National&template=dalitatrocities&slug=Dalit+teacher+assaulted+in+Bihar+village&id=83877&callid=1 (accessed February 7, 2007).

434 NCDHR Response to the Special Rapporteur's Questionnaire, p. 7.

435 Human Rights Watch, *Broken People*, p. 25; NCDHR Response to the Special Rapporteur's Questionnaire, p. 7.

436 NCDHR Response to the Special Rapporteur's Questionnaire, p. 8 (citing Shah, et al., *Untouchability in Rural India*).

b. Compulsory, exploitative, and degrading nature of rural Dalits' participation in cultural activities

On the rare occasions when Dalits are included in village ceremonies and festivals, the compulsory and degrading manner of their participation also speaks to the inequality they suffer. For example, during the Marama village festival in Karnataka state, upper-caste Hindus force Dalits to sacrifice buffalos and drink their blood, and to then mix the blood with cooked rice and run into the village fields without their *chappals* (slippers).[437] Also, the participation of Dalits in the ceremonies of their villages often amounts to little more than exploitation, as village custom mandates that Dalits render free services in times of death, marriage, or any other village function.[438]

F. Ensure Dalits' right of access to any place or service intended for use by the general public

> *Article 5 (f): The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.*

The pervasiveness of residential segregation in violation of Article 3 of the Convention has been detailed in Section VI(A). Dalits are also denied equal access to a spectrum of places and services intended for use by the general public. They are excluded from or receive discriminatory treatment in private businesses, including tea shops, barber shops, village shops, and cinemas.[439] The extent to which these practices violate Article 5(f) was noted with particular concern by the Committee in 1996 in the following terms:

> The Committee is particularly concerned about reports that people belonging to scheduled castes and tribes are often prevented from using public wells or

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[437] Human Rights Watch, *Broken People*, p. 27.
[438] Ibid., p. 27.
[439] Shah, et al., *Untouchability in Rural India*, p. 76.

entering cafés or restaurants and that their children are sometimes separated from other children in schools, in violation of article 5(f) of the Convention.[440]

The table in Appendix I of this report reveals the magnitude of the denial of Dalits' access to places and services intended for use by the general public.

1. *Denial of access to state-run places or services*

Dalits are routinely denied access to police stations, government ration shops, post offices, schools, water facilities, and *panchayat* (village council)offices.[441]

a. Denial of Entry to Police Stations

The *Untouchability in Rural India* survey found that Dalits were denied entry into police stations in 27.6 percent of villages surveyed.[442] This denial also enables violations of other rights guaranteed by the Convention, including Article 2(1) (see Section V(A)), Article 5(a) (see Section VIII(A)), Article 5(b) (see Section VIII(B)), and Article 6 (see Section IX).

b. Denial of Entry to Government Ration Shops & Post Offices

The survey also found that in 25.7 percent of villages surveyed, Dalits were denied entry to government ration shops that sell food at affordable prices to the poor, thus depriving them of access to food.[443] Dalits were also forbidden to enter post offices in 19.2 percent of the villages surveyed.[444]

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[440] Consideration of Report by India to the Committee on the Elimination of Racial Discrimination, CERD/C/304/Add.13, September 17, 1996, para 23.

[441] NCDHR Response to the Special Rapporteur's Questionnaire, p. 6.

[442] Shah, et al., *Untouchability in Rural India*, p. 71.

[443] Ibid., p. 70 (Table 2.2).

[444] Ibid.

c. Segregation in schools

Segregation in schools undermines Dalit children's right to education free from discrimination as guaranteed by Article 5(d)(v) of ICERD. Dalit children are routinely forced to sit in the back of the classroom, and are segregated from non-Dalit children during lunchtime.[445] Even Dalit teachers may be segregated from non-Dalit teachers in accessing food and water during lunchtime[446] (see Section VIII(E)(5)(a)). Segregation encourages high drop-out rates among Dalits[447] and perpetuates "untouchability" practices by teaching non-Dalit children that "untouchability" is both an acceptable and necessary practice. This segregation is particularly evident in the Mid-Day Meal Scheme.

The Mid-Day Meal Scheme was initiated following a Supreme Court order as a means of addressing hunger and malnutrition among schoolchildren.[448] However, according to a study conducted by the Indian Institute of Dalit Studies, the states of Uttar Pradesh and Bihar—where a third of India's Dalits live—have refused to implement the program.[449] Programs have also been closed because of upper-caste community opposition;[450] upper-castes have also opposed the hiring of Dalit cooks for the program.[451] Where the program is

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445 Human Rights Watch, *Broken People*, p. 26; "Economic, Social and Cultural Rights for Dalits in India: Case Study on Primary Education in Gujarat," Woodrow Wilson School of Public and International Affairs, p. 17.

446 "Economic, Social and Cultural Rights for Dalits in India: Case Study on Primary Education in Gujarat," Woodrow Wilson School of Public and International Affairs, p. 17.

447 NCDHR response to the Special Rapporteur's Questionnaire, p. 10 (citing Report, National Commission for Scheduled Castes and Scheduled Tribes, pp. 151-183, Government of India, New Delhi, 1999-2000 & 2000-2001, "the drop-out rate in Scheduled Castes during 1990-91 was as high as 49.35 percent at primary stage and 67.77 percent at middle stage and 77.65 percent at secondary stage").

448 As a result of public interest litigation on the right to food, the Supreme Court of India directed State Governments and Union Territories to implement a scheme providing every child in every government and government-assisted primary school with a prepared mid-day meal. See Right to Food Campaign, Mid-Day Meals, http://www.righttofoodindia.org/mdm/mdm_scorders.html (accessed February 7, 2007).

449 NCDHR response to the Special Rapporteur's Questionnaire, p. 10; *See also* Joel Lee & Sukhadeo Thorat, *Dalits and Right to Food: Discrimination and Exclusion in Food Related Government Programs*, unpublished document on file with World Prout Assembly, September 2005, http://www.worldproutassembly.org/archives/2005/09/dalits_and_the.html (accessed February 7, 2007).

450 Additionally, in a village in Tamil Nadu, the program was closed down because upper-caste community members opposed the scheme because it would benefit Dalit and tribal children. Lee, et al., *Dalits and Right to Food*.

451 A working paper by the Indian Institute of Dalit Studies explains the repeated acts of discrimination Dalit cooks in the mid-day meals program face:

> First, when local administrators are putting the MMS [mid-day meal scheme] into place, dominant caste community members intervene to block the hiring of Dalit cooks, favoring dominant caste cooks instead. Where a Dalit cook has been hired, dominant caste parents then begin sending their children to school with lunches packed at home, or require their children to come home for lunch, in any case forbidding their children to eat food prepared by the Dalit cook. In the third stage, dominant caste parents or community members pressure the local administration to dismiss the Dalit cook, on any pretext, and hire a dominant caste cook instead. Where this is ineffective, or sometimes without the intervening step, the dominant caste parents campaign to shut down the MMS in the village school altogether. Finally, some dominant caste parents react to the hiring and keeping of a Dalit cook by withdrawing their children from the school, and sometimes admitting them in a different school where the cook is not Dalit.

in place, Dalit students' access to food has been restricted. In many places, the program has been organized in a higher-caste locality, away from the Dalit locality.[452] In two locales in Tamil Nadu, the meals are provided in a temple, "raising immediate questions of exclusion for Dalit children, who are generally forbidden entry into temples, as well as for other non-Hindu children."[453] In October 2006 an article in the *Indian Express* quoted a primary school student, Shailesh Solanki, as follows: "We are not allowed to sit with children of the other castes. We are always asked to sit separately. This is done every time we are served food at noon. Even the food served to us is less in quantity."[454] Objections to the segregation of Dalit students in the mid-day meal program have been dealt with punitively. For example, in December 2003, a school district in Gujarat transferred seven Dalit teachers out of the district for objecting to this segregation.[455]

d. Denial of access to water and irrigation facilities

One of the most basic and most harmful ways in which segregation through "untouchability" is imposed upon Dalits is through denial of access to water. Dalits are not allowed by their higher-caste neighbors to draw water from the same wells or hand-pumps as non-Dalits.[456] More than 20 percent of Dalits do not have access to safe drinking water, only 9.84 percent of Scheduled Castes households have access to sanitation (as compared to 26.76 percent for non-Scheduled Castes households),[457] and the vast majority of Dalits depend on the "goodwill" of upper-caste community members to allow them to access wells, which are almost always situated in upper-caste colonies and villages.

Denied adequate quantities of potable water, Dalit women may need to travel long distances to obtain the amounts necessary for the survival of their families, resulting in the infringement of other fundamental rights, such as the right to the highest attainable standard of health, the right to adequate food, and the right to gain a living by work.[458] Lack

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Lee, et al., *Dalits and Right to Food.*

452 NCDHR response to the Special Rapporteur's Questionnaire, p. 10; *See also* Lee, et al., *Dalits and Right to Food*.

453 Ibid.

454 "Discrimination Divide Untouchability Still Alive in Gandhi's Land," *Indian Express*, October 5, 2006.

455 "These Kids Told: You Are Dalit, Go Eat Elsewhere," *Indian Express*, December 16, 2003.

456 Human Rights Watch, *Broken People*, p. 25

457 NHRC Report, Section VIII, p. 159.

458 Committee on Economic, Social and Cultural Rights, General Comment 15 - *The right to water (arts. 11 and 12 of International Covenant of Economic, Social and Cultural Rights)*, paras 4 and 6.

of sufficient water and adequate sanitation facilities devastates the health of entire communities.[459] Furthermore, for the large numbers of Dalits who are dependent on land for their sustenance, the inability to access water for irrigation purposes has enormous consequences on their livelihood and sustenance.[460] The *Untouchability in Rural India* survey found that in slightly more than a third of some 466 villages surveyed across 11 states, Dalits were denied access to irrigation facilities and thus prevented from tending to fields that they cultivate.[461] Finally, the deprivation of a basic human right such as water is a constant reminder of the inherent indignity of India's caste system

2. Denial of entry to privately run places or services intended for use by the general public

Many privately run businesses, such as cafés, restaurants, cinemas, and hotels[462] practice forms of "untouchability." Private individuals also enforce "untouchability" in their homes, as well as in public spaces, including public streets, market places, temples, and even in cremation or burial grounds.

a. Prohibition on Inter-Dining between Dalits and non-Dalits

The prohibition on inter-dining operates in restaurants, hotels, tea-stalls, and schools in addition to private homes. The *Untouchability in Rural India* survey found that in over 70 percent of villages surveyed, the prohibition against inter-dining is prevalent; the practice was reported in each of the 11 states studied.[463] In many tea-shops and *dhabas* (food stalls), separate crockery and cutlery are used for serving Dalits.[464] The "two-glass system," whereby Dalits use a separate set of glasses for tea-drinking which they are then required to wash, is practiced in nearly a third of all villages surveyed in the report.[465]

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[459] For the effects of water deprivation on individuals and communities, *see* Committee on Economic, Social and Cultural Rights, General Comment 15 - *The right to water (arts. 11 and 12 of International Covenant of Economic, Social and Cultural Rights)*, para. 6.

[460] Shah, et al., *Untouchability in Rural India*, p. 98.

[461] Ibid. *See also* Ibid., p. 104 (Table 2.9).

[462] NCDHR Response to the Special Rapporteur's Questionnaire, p. 6.

[463] Shah, et al., *Untouchability in Rural India*, p. 90.

[464] National Commission for Scheduled Castes and Scheduled Tribes, *Highlights of the Report for the Years 1994-95 & 1995-96* (New Delhi: Government of India, 1997), p. 2; Human Rights Watch, *Broken People*, p. 26, fn 22.

[465] Shah, et al., *Untouchability in Rural India*, p. 79.

Box 8: "Studying Together, Eating Apart"[466]

Velmurugan, a Dalit boy, and Ramesh, a non-Dalit, are friends from school. Velmurugan is often invited to study with Ramesh at his home, as Velmurugan's home in the Dalit colony does not have electricity and the street lamp outside his house is often broken. Velmurugan is the brighter student, and he helps Ramesh with his homework. However, Velmurugan must always sit outside the house on the floor below the elevated platform of the veranda, where Ramesh sits. At dinner-time, Ramesh is called inside to eat with his family. On the rare occasions on which Ramesh insists that his friend partake in the meal, his parents stipulate that Velmurugan must eat outside and off the plate that is kept for the Dalit housekeeper. Velmurugan is asked to wash the plate before and after he eats.

b. Denial of Dalits' Entry to Temples

Denial of Dalits' entry to Hindu temples by private individuals is pervasive; the *Untouchability in Rural India* survey documented this practice in each of the 11 states studied.[467] The rate of prevalence was as high as 64 percent on average, with the practice occurring in 94 percent of villages surveyed in the state of Karnataka.[468] This is the case despite the fact that the denial of temple entry is one of the most strongly resisted forms of "untouchability", in relation to which numerous campaigns and court cases have been waged.[469] Denial of access to temples implicates the right to free exercise of religion (see Section VIII(D)(5)) and access to public activities that are held in temples, such as the Mid-Day Meal Scheme discussed above (see Section VIII(F)(1)(c)).

c. Untouchable even in death

In one incident recorded in the *Untouchability in Rural India* survey, upper-caste community members constructed a wall to divide the village cremation ground (*ghat*) of Gwali Pallasia

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[466] This case study was reported in Shah, et al., *Untouchability in Rural India*, p. 90.

[467] Ibid., pp. 84-5.

[468] Ibid.

[469] Overall, the average occurrence of this practice was 64 percent in the 11 states included in the study. Ibid., p. 87.

(Indore district, Madhya Pradesh) that had once been shared by Dalits and non-Dalits, forcing Dalits to use another *ghat* some distance away. This segregation is strictly enforced; an attempt by Dalits to use the village *ghat* resulted in beatings, ransacking and looting, followed by a boycott, denied participation in village activities, and evictions after Dalits registered complaints with the police.[470]

d. Discrimination in public streets and market places

Dalits are perpetually subjected to humiliation and degradation through informal but strictly imposed caste codes that regulate their dress and their behavior in the presence of upper-caste community members. Dalits are denied equal access to public streets and areas by upper-castes. Dalit men are often forced to stand in the presence of upper-caste men on roads, or to bow to them.[471] Dalit women often adopt a humble demeanor and maintain a submissive posture to show respect to upper-castes.[472] Dress codes are imposed by upper-castes, which forbid Dalits from wearing new or brightly colored clothes. Clean clothes are also often forbidden by the upper-caste in rural India.[473] In some upper-caste neighborhoods, Dalits are expected to remove their shoes and dismount from bicycles when on public streets.[474]

[470] *Ibid.,* p. 89.

[471] *Ibid.,* p.65 (Table 2.1).

[472] Shah, et al., *Untouchability in Rural India*, p. 124.

[473] Ibid., p. 83.

[474] Ibid.

IX. Article 6: Assure effective protection and remedies against acts of caste-based discrimination

> *Article 6: State Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.*

In its periodic report, the Government of India cites to constitutional provisions and legislative measures that open its courts to victims of discrimination.[475] These measures include legal services for the indigent and the setting up of people's courts.[476] While the government has enacted such measures, their utility is belied by the insidious nature of caste-based discrimination that has been documented throughout this report, and by the country's own National Human Rights Commission[477]—a body that India characterizes as the apex national institution to protect human rights and redress grievances.[478] On the particular issue of lack of effective remedies for Dalits, the Commission has found that even where cases are properly registered under the Prevention of Atrocities Act, 1989 several states are not providing economic relief to victims of atrocities as is required. [479] The NCDHR has also found that Dalit victims have often been unable to benefit from this requirement

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[475] Government of India, Fifteenth, Sixteenth, Seventeenth, Eighteenth, and Nineteenth Periodic Reports to the Committee on the Elimination of Racial Discrimination, CERD/C/IND/19, paras. 134-55.

[476] Ibid.

[477] The NHRC has additionally recommended to the Central Government that it review its facilities like legal aid, implicitly concluding that Dalits are not necessarily the beneficiaries of such services, despite the fact that the vast majority of Dalits are poor. NHRC Report, Section IV, p. 27 (citing recommendations from National Commission on SCs and STs - A Report on the problem of Untouchability, January 1989).

[478] Government of India, Fifteenth, Sixteenth, Seventeenth, Eighteenth, and Nineteenth Periodic Reports to the Committee on the Elimination of Racial Discrimination, CERD/C/IND/19, para. 156.

[479] The Commission found that even if cases are properly registered under the Prevention of Atrocities Act, 1989 several states have failed to provide compensation to victims under the Act. Even though this scheme is sponsored by the Central Government, funding to states is conditional on the states' ability to contribute 50 percent of the funding. Due to budgetary constraints and lack of political will, states do not contribute the required amount and thus, lose central funding. Consequentially, the NHRC has concluded that several states are not providing economic relief to victims of atrocities, as the funds spent in these states under the Prevention of Atrocities Act, 1989 bears no relationship to the number of atrocities taking place in the states. NHRC Report, Section IV, p. 50.

because police will purposely downplay charges and register atrocities against Dalits under the Indian Penal Code instead of the Act, in order to circumvent the compensation requirement.[480] These are but a few examples of the systematic discrimination Dalits endure before all institutions of law enforcement—the very bodies responsible for ensuring their protection (see Section VIII(A)).

480 NCDHR Response to the Special Rapporteur's Questionnaire, p. 25.

X. Article 7: Adopt educational measures to combat caste-based prejudices

Article 7: States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

In its Periodic Report, India indicates that it has devoted “considerable attention and space to constitutional provisions related to fundamental rights” in curricula[481] and in developing policy guidelines for media “to ensure that racial or other prejudices are not propagated.”[482] The treatment of the caste system in textbook and curricula, along with inadequate media representation of Dalit issues and the lack of Dalit journalists generally, suggest that the government’s efforts have so far been inadequate. In addition, the widespread practice and acceptance of caste-based segregation in government schools (see Sections VIII(E)(5)(a) and VIII(F)(1)(c)) may send the strongest and most intolerant message of all.

A. Textbook and curricula in public and private schools distort the caste problem in India

The treatment of caste discrimination in textbooks and curricula can strengthen caste division and prejudice. For example, a report by the Mumbai-based NGO KHOJ found that even progressive curricula either exclude any mention of caste discrimination or discuss the caste system in a way that suggests that caste inequities and discrimination no longer

[481] Government of India, Fifteenth, Sixteenth, Seventeenth, Eighteenth, and Nineteenth Periodic Reports to the Committee on the Elimination of Racial Discrimination, CERD/C/IND/19, para. 159.

[482] Ibid., para. 161.

exist.[483] School textbooks may similarly fail to mention caste discrimination, may attempt to justify the origins of caste discrimination[484] or may attribute the unequal situation of Dalits to their "ignorance, illiteracy and blind faith…because they still fail to realise [the] importance of education in life."[485]

B. Inadequate media representation of Dalit issues and lack of Dalit journalists

While Dalits, together with tribals, make up nearly 25 percent of the country's population, the NHRC found that the media "provides negligible space to their plight/problems."[486] Beyond reports of major instances of violence, there is a lack of any sustained reporting of their problems and efforts to include their voices.[487] Instead, these communities mostly receive attention when the discussion is focused on backwardness, population growth, lack of entrepreneurship and productivity, thereby perpetuating caste-based stereotypes.[488] Part of the problem of representation of Dalit issues in the media lies in the lack of Dalit journalists. There is only one nationally prominent Dalit journalist, Chandrabhan Prasad, who has written about the structure of discrimination against Dalits.[489]

[483] Central Advisory Board of Education (CABE) sub-Committee on "Regulatory Mechanisms for Textbooks and Parallel Textbooks Taught in Schools Outside the Government System," pp. 8-9.

[484] CABE sub-Committee on "Regulatory Mechanisms for Textbooks and Parallel Textbooks Taught in Schools Outside the Government System," pp. 8-9. See for example a Social Studies text approved for use by the Gujarat State Board, which describes the *varna* (caste) system as a "precious gift" given by the Aryans to the world and extols the virtues of the caste system for socially and economically organizing society on the basis of labor. Ibid., p. 42.

[485] CABE sub-Committee on "Regulatory Mechanisms for Textbooks and Parallel Textbooks Taught in Schools Outside the Government System," p. 43.

[486] NHRC Report, Section VI, p. 134.

[487] Ibid.

[488] Ibid.

[489] Chandrabhan Prasad, "India's Hall of Shame," *The Pioneer,* http://www.dailypioneer.com/columnist1.asp?main_variable=Columnist&file_name=prasad%2Fprasad179.txt&writer=prasad (accessed February 7, 2007).

XI. Conclusion

Under-educated, severely impoverished, and brutally exploited, Dalits struggle to provide for even their most basic daily needs. Dalits must also endure daily threats to their physical security from both state and private actors. The violence by upper-caste groups against Dalits have two major causes: the "untouchability" and discrimination upper-caste community members practice on a daily basis[490] and the desire of upper-caste community members to protect their own entrenched status by preventing Dalit development and the fulfillment of Dalits' rights.[491] A review of the political, social, economic, and cultural status of Dalits in India shows the State Party to be in violation of its obligation to respect, protect, and ensure Convention rights to all individuals in its jurisdiction. India routinely denies Dalits the rights and privileges that many of its other citizens take for granted.

This failure stems from the refusal to recognize that Article 1's prohibition of discrimination on the grounds of "descent" encompasses social stratification on the basis of caste. Discrimination is entrenched in a number of facets of the government—from the discriminatory practices of law enforcement, prosecutors and judges, to the failure to eradicate segregation in public services, including schools, and in residential arrangements, to the failure to successfully implement programs to ensure the development and protection of Dalits, including in particular Dalit women. The State Party has also failed to ensure that private actors, in particular upper-caste community members, observe the prohibition on discrimination. Retaliatory violence, social and economic boycotts, and exploitative labor conditions enforced by private actors are unchecked, resulting in violation of Dalits' rights to personal security and other rights that are notionally guaranteed by the Constitution and various legislative measures. The widespread practice of "untouchability" and the violation of Convention rights it entails necessitate that India undertake comprehensive review and reform of the existing law, polices, and practices that enable the extreme marginalization and persecution of Dalits to continue unabated.

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490 NCDHR Response to the Special Rapporteur's Questionnaire, p. 4.

491 NHRC Report, Section I, p. 1.

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Appendix I

Overview of the Forms/Sites in which Untouchability is being Practised in Rural India, by Degree of Prevalence[492]

More than 50% of Villages	45-50% of Villages	30-40% of Villages	25-30% of Villages	20-25% of Villages	15-20% of Villages	10-15% of Villages	Less than 10% of Villages
▪ Denied entry into non-Dalit houses ▪ Prohibitions against food sharing ▪ Denied entry into places of worship ▪ Ill-treatment of women by other women	▪ Denied access to water facilities ▪ Ban on marriage processions ▪ Not allowed to sell milk to cooperatives ▪ Denied barber services ▪ Denied laundry services ▪ Ill-treatment of women by non-SC [scheduled caste] men	▪ Denied work as agricultural labourer ▪ Cannot sell things in local markets ▪ Denied visits by health workers ▪ Separate seating in 'hotels' ▪ Denied access to irrigation facilities ▪ Separate utensils in 'hotels' ▪ Discriminatory treatment in police stations ▪ Separate seating in Self-Help Group	▪ Denied entry into police stations ▪ Denied carpenter's services ▪ Denied entry into PDS [Public Distribution System] shops ▪ Denied access to restaurants/ hotels ▪ Forced to stand before upper-caste men	▪ Paid lower wage rates for same work ▪ Ban on festival processions on roads ▪ Denied home delivery of letters ▪ Segregated seating in schools ▪ Denied entry into private health clinics ▪ No access to grazing/fishing grounds ▪ Tailor refuses to take measurements ▪ Buying of pots from potter ▪ Separate drinking water in schools	▪ Discriminatory treatment in post offices ▪ Cannot wear new/bright clothes ▪ Shops: No touching in transactions ▪ Denied access to public roads/passage ▪ Denied entry into PHCs [Primary Health Centers] ▪ Not allowed to use umbrellas in public ▪ Schools: SC students and non-SC teacher ▪ Schools: SC teachers and non-SCstudents	▪ Denied entry into panchayat [village council] office ▪ Ban on wearing dark glasses, smoking, etc. ▪ Schools: SC teacher and non-SC student ▪ Public transport: No seats/last entry ▪ Separate lines at polling booth ▪ Denied entry into polling booth ▪ Cannot use chappals [slippers] on public roads ▪ Discriminatory treatment in PHCs [Primary Health Centers]	▪ Denied access/entry to public transport ▪ Separate times at polling booth ▪ Discriminatory treatment in private clinics ▪ Compulsion to seek blessing in marriages ▪ Forced to seek upper caste's permission for marriages ▪ Cannot use cycles on public roads ▪ Denied entry/seating in cinema halls

[492] Reproduced from: Shah, et al., *Untouchability in Rural India*, p. 65 (Table 2.1). The survey investigated the extent and incidence of untouchability in different spheres of life in contemporary rural India. It examined 565 villages in 11 major states of India, including the states of Andhra Pradesh, Karnataka, Tamil Nadu, and Kerala in south India; Madhya Pradesh, Maharashtra, and Rajasthan in central and western India; Punjab and Uttar Pradesh in north India; and Orissa and Bihar in eastern India. The states selected account for 77 percent of India's total Dalit population and cover a substantial and representative portion of India's territory and overall population. See *Ibid.*, pp. 48-49.

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Hidden Apartheid

Caste Discrimination against India's "Untouchables"

Shadow Report to the UN Committee on the Elimination of Racial Discrimination

More than 165 million people in India continue to be subject to discrimination, exploitation, and violence simply because of their caste. In India's "hidden apartheid," "untouchability" relegates Dalits, or so-called untouchables, throughout the country to a lifetime of segregation and abuse. Caste-based divisions continue to dominate in housing, marriage, employment, and general social interaction—divisions that are reinforced through economic boycotts and physical violence.

Hidden Apartheid was produced as a shadow report in response to India's submission to the United Nations Committee on the Elimination of Racial Discrimination, which monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The report documents India's systematic failure to respect, protect, and ensure Dalits' fundamental human rights. Severe violations persist in education, health, housing, property, freedom of religion, free choice of employment, and equal treatment before the law. The report also documents routine violations of Dalits' right to life and security of person through state-sponsored or sanctioned acts of violence, including torture. Dalit women face multiple forms of discrimination and are frequent targets of sexual abuse. State and private actors enjoy virtual impunity for these crimes.

As a State Party to ICERD, India has an obligation to prohibit and bring to an end caste-based discrimination. India has consistently cited its anti-discrimination legislation and policies to show that it is complying with its obligations. While laws and policies outlawing caste-based discrimination and promoting Dalit development are welcome, they have been implemented sporadically and often not at all. The Center for Human Rights and Global Justice and Human Rights Watch call on the Indian government to take active steps to comply with its obligations under international human rights law, and for the international community to scrutinize India's treatment of this most marginalized and socially disadvantaged group.



Dalit women wait for medical treatment at an homage site on December 6, 2006. Over 200,000 Dalits gathered at the site to mark the fiftieth anniversary of the death of their iconic leader Dr. B. R. Ambedkar. Ambedkar, who was chief architect of the Indian Constitution, spent his life fighting "untouchability" and other forms of caste discrimination.

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